

# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 34, NUMBER 7  
TUESDAY, JANUARY 1, 2008

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#### MEETING NOTICE: ARRS

The Administrative Regulation Review Subcommittee is ten-  
tatively scheduled to meet January 7, 2008 at 1:30 p.m. in room  
149 Capitol Annex. See tentative agenda on pages 1623-1625  
of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2007 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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**KENTUCKY ADMINISTRATIVE REGULATIONS** are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

Title	Chapter	Regulation
806	KAR	50: 155
Cabinet, Department, Board, or Agency	Office, Division, or Major Function	Specific Regulation

#### **ADMINISTRATIVE REGISTER OF KENTUCKY**

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA, January 7, 2008, at 1:30 p.m., Room 149 Capitol Annex**

**PERSONNEL CABINET**

**Board**

101 KAR 1:335. Employee actions.

**Classified**

101 KAR 2:034. Classified compensation.

101 KAR 2:220. Educational Assistance Program.

101 KAR 2:230. Kentucky Employee Mediation Program.

**FINANCE AND ADMINISTRATION CABINET**

**Department of Revenue**

**Sales and Use Tax; Administration and Accounting**

103 KAR 31:180 & E. Signature project refunds on construction costs. ("E" expires 5/13/08)

**Tax Increment Financing**

103 KAR 50:050 & E. Incremental revenues for income and limited liability entity taxes. ("E" expires 2/12/2008) (Not Amended After Comments) (Deferred from December)

**GENERAL GOVERNMENT**

**Kentucky State Board Of Accountancy**

**Board**

201 KAR 1:160. Peer reviews. (Written Comments Received)

**Kentucky Board of Optometric Examiners**

**Board**

201 KAR 5:040. Unprofessional conduct.

**Kentucky Board of Medical Licensure**

**Board**

201 KAR 9:021. Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees.

**Kentucky Real Estate Commission**

**Commission**

201 KAR 11:121. Improper conduct. (Written Comments Received)

201 KAR 11:170. Private school and course approval. (Deferred from November)

201 KAR 11:175. Prelicense and continuing education-certification requirements and approval process; withdrawal of approval; approved course categories for. Mandatory prelicense instructor continuing education requirements, exemptions, extensions, and waivers; noncompliance-procedural requirements for; instructor training program and provider requirements, monitoring. (Deferred from November)

201 KAR 11:210. Licensing, education, and testing requirements. (Deferred from November)

201 KAR 11:230. Mandatory continuing education, instructor requirements; out-of-state requirements; maintaining records; and actions for failure to comply. (Deferred from November)

201 KAR 11:240. Distance education, and education via interactive television-requirement, generally; exemptions; course criteria; course provider requirements. (Deferred from November)

201 KAR 11:450. Broker management course. (Deferred from November)

**Kentucky Board of Embalmers and Funeral Directors**

**Board**

201 KAR 15:030. Fees.

201 KAR 15:110. Funeral establishment criteria.

**Kentucky Board of Chiropractic Examiners**

**Board**

201 KAR 21:041. Licensing; renewals, fees.

201 KAR 21:070. Licensing examination requirements.

201 KAR 21:081. Repeal of 201 KAR 21.080.

201 KAR 21:095. Licensure and registration of persons performing peer review.

**COMMERCE CABINET**

**Kentucky Department of Fish and Wildlife Resources**

**Game**

301 KAR 2:221 & E. Waterfowl seasons and limits. ("E" expires 5/12/08)

301 KAR 2:222 & E. Waterfowl hunting requirements. ("E" expires 5/12/08)

**Licensing**

301 KAR 5:100. Interstate Wildlife Violators Compact.(Deferred from December)

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**

**Department For Environmental Protection**

**Division of Air Quality**

**Attainment and Maintenance of the National Ambient Air Quality Standards**

401 KAR 51.001 & E. Definitions for 401 KAR Chapter 51. ("E" Expires 3/26/08) (Deferred from December)

401 KAR 51:017 & E. Prevention of significant deterioration of air quality. ("E" Expires 3/26/08) (Deferred from December)

401 KAR 51:052 & E. Review of new sources in or impacting upon nonattainment areas. ("E" Expires 3/26/08) (Deferred from December)

**Permits, Registrations, and Prohibitory Rules**

401 KAR 52:001 & E. Definitions for 401 KAR Chapter 52. ("E" Expires 3/26/08) (Deferred from December)

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**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections**

**Office of the Secretary**

- 501 KAR 6:060. Northpoint Training Center.
- 501 KAR 6:170. Green River Correctional Complex.

**Class D and Class C Felons**

- 501 KAR 2:020. Definitions for 501 KAR Chapter 2. (Deferred from December)
- 501 KAR 2:030. Administration. (Deferred from December)
- 501 KAR 2:040. Waivers. (Deferred from December)
- 501 KAR 2:050. Transfer request. (Deferred from December)
- 501 KAR 2:060. Procedures for housing of Class D and Class C felons. (Deferred from December)
- 501 KAR 2:070. Work Release. (Deferred from December)

**Jail Standards for Full-service Facilities**

- 501 KAR 3:010. Definitions for 501 KAR Chapter 3. (Deferred from December)
- 501 KAR 3:020. Administration; management. (Deferred from December)
- 501 KAR 3:040. Personnel. (Deferred from December)
- 501 KAR 3:050. Physical plant. (Deferred from December)
- 501 KAR 3:060. Security; control. (Deferred from December)
- 501 KAR 3:070. Safety; emergency procedures. (Deferred from December)
- 501 KAR 3:080. Sanitation; hygiene. (Deferred from December)
- 501 KAR 3:090. Medical services. (Deferred from December)
- 501 KAR 3:100. Food services. (Deferred from December)
- 501 KAR 3:130. Prisoner programs; services. (Deferred from December)
- 501 KAR 3:140. Prisoner rights. (Deferred from December)

**Jail Standards for Restricted Custody Center Facilities**

- 501 KAR 7:040. Personnel. (Deferred from December)
- 501 KAR 7:080. Sanitation; hygiene. (Deferred from December)
- 501 KAR 7:090. Medical services. (Deferred from December)
- 501 KAR 7:100. Food services. (Deferred from December)

**Jail Standards for Life Safety Facilities**

- 501 KAR 13:010. Life Safety Issues. (Written Comments Received)  
**Kentucky Law Enforcement Council**

**General Training Provision**

- 503 KAR 3:110. Certified Court Security Officers academy trainee requirements; misconduct; penalties; discipline procedures. (Deferred from December)

**Department of Kentucky State Police**

**Automated Fingerprint Identification System**

- 502 KAR 14:010. Provision and maintenance of automated fingerprint identification system equipment and programs in detention centers. Submission of fingerprints by jailers to the Kentucky State Police.

**TRANSPORTATION CABINET  
Department of Vehicle Regulation**

**Driver Improvement**

- 601 KAR 13:070. KRS 159.051. Compliance verification for a minor. (Written Comments Received)  
**Department of Highways**

**Traffic**

- 603 KAR 5:320. Safety in highway work zones. (Not Amended After Comments) (Deferred from December)

**EDUCATION CABINET  
Kentucky Board of Education**

**Office of Chief State School Officer**

- 701 KAR 5:130. Drug Testing of Teachers Involved in Illegal Use of Controlled Substances. (Deferred from December)

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
Department of Labor**

**Department of Workers' Claims**

- 803 KAR 25:096. Selection of physicians, treatment plans and statements for medical services. (Not Amended After Comments) (Deferred from November)
- 803 KAR 25:280. Certification of drug-free workplace.

**Kentucky Workers' Compensation Funding Commission**

**Commission**

- 803 KAR 30:020. Payment of audit expenses by taxpayer.  
**Department for Natural Resources**

**Division of Oil and Gas**

- 805 KAR 1:110. Underground injection control. (Written Comments Received)  
**Department of Public Protection  
Office of Insurance**

**Trade Practices and Frauds**

- 806 KAR 12:180. Military sales practices.

**Rates and Rating Organizations**

- 806 KAR 13:150. Property and casualty rate and rule filings.

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**Insurance Contract**

806 KAR 14:006. Property and casualty insurance form filings.

**Kentucky Horse Racing Authority**

**Thoroughbred Racing**

810 KAR 1:015. Claiming races. (Written Comments Received)

810 KAR 1:021. Backside Improvement Fund.

**Department of Public Protection**

**Kentucky Horse Racing Authority**

**Thoroughbred Racing**

810 KAR 1:027. Entries, subscriptions, and declarations. (Not Amended After Comments) (Deferred from December)

810 KAR 1:033. Repeal of 810 KAR 1:032.

810 KAR 1:090. Kentucky Thoroughbred Development Fund. (Deferred from December)

**Harness Racing**

811 KAR 1:085. Conduct of racing.

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Office of the Secretary**

**E-Health**

900 KAR 7:020 & E. Kentucky e-Health Corporation. ("E" expires 3/16/08) (Deferred from December)

**Office of Health Policy**

**Health Provider Surveillance Data**

902 KAR 19:020. Data reporting by health care providers.

**Office of Inspector General**

**Office**

906 KAR 1:120. Informal dispute resolution. (Written Comments Received)

**Department for Medicaid Services**

**Medicaid Services**

907 KAR 1:013 & E. Diagnostic-related group (DRG) inpatient hospital reimbursement. ("E" expires 5/13/07)

907 KAR 1:061 & E. Payments for ambulance transportation. ("E" expires 5/13/07)

907 KAR 1:815 & E. Nondiagnostic related group inpatient hospital reimbursement. ("E" expires 5/13/07)

907 KAR 1:820 & E. Disproportionate share hospital distributors. ("E" expires 5/13/07)

**Department for Mental Health and Mental Retardation Services**

**Division for Mental Health and Substance Abuse**

**Mental Health**

908 KAR 2:220. Peer specialist services. (Not Amended After Comments) (Deferred from December)

**Department for Aging and Independent Living**

**Aging Services**

910 KAR 1:090. Personal care assistance services.

**Department of Community Based Services**

**Child Welfare**

922 KAR 1:390. Standards for residential child-caring facilities. (Amended After Comments) (Deferred from December)

**Day Care**

922 KAR 2:002. Repeal of 922 KAR 2:001. (Written Comments Received)

922 KAR 2:090. Child-care center licensure. (Written Comments Received)

922 KAR 2:100. Certification of family child-care homes. (Written Comments Received)

922 KAR 2:110. Child-care center provider requirements. (Written Comments Received)

922 KAR 2:120. Child-care center health and safety standards. (Written Comments Received)

922 KAR 2:160. Child care assistance program. (Written Comments Received)

922 KAR 2:170. STARS for KIDS NOW Program for Type I licensed child-care centers. (Written Comments Received)

922 KAR 2:210. STARS for KIDS NOW Program for Type II licensed and certified family child-care homes. (Written Comments Received)

**ADMINISTRATIVE REGULATION REVIEW PROCEDURE - OVERVIEW**  
(See KRS Chapter 13A for specific provisions)

**Filing and Publication**

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

**Public Hearing and Public Comment Period**

The administrative body shall schedule a public hearing on proposed administrative regulations which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted until the end of the calendar month in which the administrative regulation was published.

The administrative regulation shall include: the place, time, and date of the hearing; the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

The administrative body shall notify the Compiler, by phone and letter, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

No transcript of the hearing need to be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

**Review Procedure**

After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.

## EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, December 14, 2007

(NOTE: Emergency administrative regulation expire 180 days from the date of filing, or upon replacement, repeal or withdrawal)

**STATEMENT OF EMERGENCY**  
**101 KAR 2:210E**

This emergency regulation incorporates the 2008 summary plan descriptions, by reference, which specifies health insurance benefit information for the Public Employee Health Insurance Program. KRS 18A.2254 requires the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the eleven (11) summary plan descriptions. This emergency regulation is necessary to meet a deadline for the promulgation of an administrative regulation that is established by state law. KRS 18A.2254, requires the Personnel Cabinet to promulgate an administrative regulation to incorporate, by reference, the summary plan descriptions for the Public Employee Health Insurance Program. The Personnel Cabinet was unable to file an ordinary administrative regulation with the Legislative Research Commission before October 12, 2006, because it did not have an opportunity to review second quarter financial data from the 2007 plan year in its effort to secure the lowest possible health insurance rates for its participants. This material was first compiled and available for detailed analysis by the Personnel Cabinet in August 2007. Subsequently, the Personnel Cabinet was obliged to comply with a mandatory 20-day review period before the Kentucky Personnel Board which further delayed filing of the original ordinary administrative regulation. As a result, the Personnel Cabinet has determined that the ordinary administrative regulation will not be effective January 1, 2008, the first day of the 2008 plan year. Therefore to comply with KRS 18A.2254, the Personnel Cabinet has withdrawn the original ordinary regulation filed October 12, 2007, and files this emergency regulation. This emergency regulation will be replaced by an ordinary administrative regulation because the summary plan descriptions for the Public Employee Health Insurance Program will be updated for the 2008 plan year and every year thereafter. This emergency regulation will be identical to the ordinary administrative regulation filed

ERNIE FLETCHER, Governor  
 BRIAN CRALL, Secretary  
 THOMAS B. STEPHENS, Executive Director

**PERSONNEL CABINET**  
**Office of the Secretary**  
**(Emergency Amendment)**

**101 KAR 2:210E. Summary plan descriptions for the Public Employee Health Insurance Program.**

RELATES TO: KRS 18A 030, 18A 225, 18A.2254

STATUTORY AUTHORITY: KRS 18A 030(2)(b), 18A.2254(1)(a)

EFFECTIVE: December 7, 2007

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A 2254(1)(a) requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the summary plan descriptions for public employees covered under the self-insured plan. This administrative regulation incorporates by reference eleven (11) summary plan descriptions distributed to members of the Public Employee Health Insurance Program providing specific information on plan coverage, exclusions, and appeal rights.

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Commonwealth of Kentucky, "Commonwealth" Essential Summary Plan Description", January 1, 2008 [2007], edition;
- (b) "Commonwealth of Kentucky, "Commonwealth" Enhanced Summary Plan Description", January 1, 2008 [2007], edition;
- (c) "Commonwealth of Kentucky, "Commonwealth" Prescription Drug Summary Plan Description, Commonwealth Select",

January 1, 2008 [2007], edition,

(d) "Commonwealth of Kentucky, "Commonwealth" Premier Summary Plan Description", January 1, 2008 [2007], edition;

(e) "Commonwealth of Kentucky, Select Summary Plan Description", January 1, 2008 [2007], edition;

(f) "Commonwealth of Kentucky, Prescription Drug Summary Plan Description, Commonwealth Essential", January 1, 2008 [2007], edition;

(g) "Commonwealth of Kentucky, Prescription Drug Summary Plan Description, Commonwealth Enhanced", January 1, 2008 [2007], edition;

(h) "Commonwealth of Kentucky, Prescription Drug Summary Plan Description, Commonwealth Premier", January 1, 2008 [2007], edition;

(i) "Summary Plan Description, Commonwealth of Kentucky Health Flexible Spending Account", January 1, 2008 [2007], edition;

(j) "Summary Plan Description, Commonwealth of Kentucky Dependent Care Flexible "Care" Spending Account", January 1, 2008 [2007], edition; and

(k) "Summary Plan Description, Commonwealth of Kentucky, Health Reimbursement Account "Waivers Only", January 1, 2008 [2007], edition.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor [200 Fair Oaks Lane, Suite 616], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 3. The provisions in this administrative regulation will become effective January 1, 2008

BRIAN J. CRALL, Secretary

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC December 7, 2007 at 1 p.m.

CONTACT PERSON: Thomas B. Stephens, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-7603

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Thomas B. Stephens

(1) Provide a brief summary of:

(a) What this administrative regulation does This administrative regulation incorporates summary plan descriptions, by reference, for various health benefit plans offered through the Public Employee Health Insurance Program.

(b) The necessity of this administrative regulation This regulation is necessary to comply with the statutory mandate of KRS 18A.2254, which requires the Personnel Cabinet to incorporate by reference in an administrative regulation the summary plan descriptions for public employees covered under the Public Employee Health Insurance Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation complies with the statute authorizing the self-insured health benefit plan and the statute mandating the promulgation of the regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute KRS 18A.2254 by incorporating by reference, the summary plan descriptions for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation. This is an amendment. This amendment constitutes a

compilation of the health benefit options, eligibility rules, exclusions, and appeal rights for plan year 2008.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect the additional health benefit for the plan year 2008 and the statutory mandate to annually update the regulations incorporating the summary plan descriptions contained in KRS 18A.2254.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the summary plan descriptions be incorporated by reference in an administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the summary plan descriptions be incorporated by reference in an administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Both state and select county and local government entities, including employees of the local school boards and districts, will be affected. Additionally, all eligible employees and participants of the Public Employee Health Insurance Program will be affected by additional health benefit options and changes to the material incorporated by reference in this amended regulation. Specifically, this encompasses approximately 153,000 eligible employees under KRS 18A.225(1)(a) and a total of 242,000 (which would include qualifying beneficiaries and dependents).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required by entities to comply with the incorporation of these provisions as administrative regulations. The 2008 Summary Plan Descriptions will provide notice of the benefits provided to those individuals covered under the Public Employee Health Insurance Program for plan year 2009.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Complying with this administrative regulation will not have a cost impact to participants or beneficiaries covered under the Public Employee Health Insurance Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants and dependents covered under the Public Employee Health Insurance Program for plan year 2008 will have identical health insurance coverage benefits as plan year 2007.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not require an increase in funding or fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all participants in the Public Employee Health Insurance Program which includes state government, select local government entities and employees of local school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2257, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287, and Internal Revenue Code Subsections 105, 106, 125, 152 and 213.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, school boards or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, school boards or school districts) for the first year? The administrative regulation will not generate any revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative regulation will not generate any revenues.

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law an amended administrative regulation will be promulgated in 2009 and each subsequent plan year.

#### STATEMENT OF EMERGENCY 201 KAR 30:190E

This emergency regulation establishes the education requirements for certification or licensure of applicants before the Kentucky Real Estate Appraisers Board. This emergency administrative regulation must be placed into effect immediately in order to extend a deadline that would otherwise go into effect on January 1, 2008. This extension is necessary to implement changes mandated under Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351. The extension will give certain applications an additional two (2) years to complete the experience requirements for certification or licensure. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on December 14, 2007.

STEVE BESHEAR, Governor  
J.W. GRABEEL, Chair

#### GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (Emergency Amendment)

201 KAR 30:190E. Educational requirements for certification effective January 1, 2008.

RELATES TO: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3)

EFFECTIVE DATE: December 14, 2007

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3)(d)

requires the board to establish by administrative regulations requirements for education of appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions including the education requirements promulgated by the Appraisers Qualifications Board. This administrative regulation establishes the education requirements for appraisers of real property in federally-related transactions that will be effective after December 31, 2007.

Section 1. Definitions (1) "AQB" means the Appraiser Qualification Board of the Appraisal Foundation.

(2) "ASB" means the Appraiser Standards Board of the Appraisal Foundation.

(3) "Class hour" means sixty (60) minutes, of which at least fifty (50) minutes are instruction attended by the student, including time for examinations.

(4) "Required Core Curriculum" means the list of course topics identified in Section 7 of this administrative regulation.

Section 2. (1) Credit for the qualifying education requirements set out in this administrative regulation may be obtained only from the following providers:

- (a) Colleges or universities;
- (b) Community or junior colleges;
- (c) Real estate appraisal or real estate related organizations;
- (d) State or federal agencies or commissions;
- (e) Proprietary schools;
- (f) Providers approved by the board in accordance with 201 KAR 30:150; and

(g) The Appraisal Foundation or its boards.

(2) Experience may not be substituted for education.

Section 3. Criteria Specific to Qualifying Education. (1) A class hour will be credited only for educational offerings with content that follows the Required Core Curriculum in Section 7 of this administrative regulation for each respective credential.

(2) The course content requirement may be general or it may be specific to a property type.

(3) A class hour may be obtained only where:

(a) The minimum length of the educational offering is at least fifteen (15) hours; and

(b) The student successfully completes an approved closed-book examination pertinent to that educational offering.

(4) If an individual qualifying education course covers multiple topics identified within the Required Core Curriculum, there shall be appropriate testing of each component.

(5) Courses taken to satisfy the qualifying education requirements shall not be repetitive.

(6) Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.

(7) USPAP courses.

(a) An applicant shall take the 15-Hour National USPAP Course, or its equivalent, and pass the associated 15-Hour National USPAP Course Examination as approved by the AQB.

(b) At least one (1) of the course instructors shall be an AQB Certified USPAP Instructor who is also a state certified appraiser.

(c) USPAP course content equivalency shall be determined by the AQB or by an alternate method established by the AQB.

Section 4. Qualifying education for Associate Real Property Appraiser effective January 1, 2008. (1) Regardless of the applicant's accrual of [experience-or] education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained his or her certification as a associate real property appraiser shall be required to fulfill the requirements of this section if the certification is not issued on or before December 31, 2007.

(2) Prior to applying for an associate real property appraiser certification, an applicant shall have completed ninety (90) [seventy-five (75)] class hours as specified in the Required Core Curriculum Section 7 of this administrative regulation, which shall in-

clude at least fifteen (15) hours related to basic income.

(3) An applicant shall pass:

(a) The Required Core Curriculum examination for each course taken; and

(b) The 15-Hour National USPAP Course or its equivalent and examination as stated in section 3(7) of this administrative regulation.

Section 5. Qualifying education for Licensed real property appraisers effective January 1, 2008. (1) Regardless of the applicant's accrual of [experience-or] education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained licensure shall be required to fulfill the requirements of this section if the license is not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be successful completion of 180[150] class hours as specified in the required core curriculum Section 7.

(3) The applicant shall successfully complete the 15-Hour National USPAP Course, or its equivalent, and examination required by Section 3(7) of this administrative regulation. There is no alternative to successful completion of the examination.

(4) An applicant for the licensed real property certificate shall hold an associate degree, or higher, from an accredited college, junior college, community college, or university, unless the requirements of subsection (5) of this section are satisfied.

(5)(a) In lieu of the associate degree, an applicant for the certified residential real property certification shall successfully pass twenty-one (21) semester credit hours in the following collegiate subject matter courses from an accredited college, junior college, community college, or university:

1. English Composition;

2. Principles of Economics (Micro or Macro);

3. Finance;

4. Algebra, Geometry, or higher mathematics;

5. Statistics;

6. Introduction to Computers-Word processing/spreadsheets; and

7. Business or Real Estate Law

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program (CLEP) examinations and issues a transcript for the examination, showing its approval, it will be accepted as credit for the college course.

Section 6. Qualifying education for certified residential real property appraisers certification effective January 1, 2008. (1) Regardless of the applicant's accrual of [experience-or] education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained certification as a certified residential real property appraiser shall be required to fulfill the requirements of this section if the certification is not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be completion of 200 class hours as specified in the required core curriculum Section 7.

(3) The applicant shall successfully complete the 15-Hour National USPAP Course, or its equivalent, and the examination required by Section 3(7) of this administrative regulation.

(4) An applicant for the certified residential real property certificate shall hold an associate degree, or higher, from an accredited college, junior college, community college, or university, unless the requirements of subsection 5 of this section are satisfied.

(5)(a) In lieu of the associate degree, an applicant for the certified residential real property certification shall successfully pass twenty-one (21) semester credit hours in the following collegiate subject matter courses from an accredited college, junior college, community college, or university:

1. English Composition;

2. Principles of Economics (Micro or Macro);

3. Finance;

4. Algebra, Geometry, or higher mathematics;

5. Statistics;

6. Introduction to Computers-Word processing/spreadsheets;

and

7. Business or Real Estate Law.

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program® (CLEP) examinations and issues a transcript for the examination, showing its approval, it will be accepted as credit for the college course.

Section 7. Qualifying Education for Certified General Real Property Appraiser certification effective January 1, 2008. (1) Regardless of the applicant's accrual of [experience-or] education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained certification as a certified general real property appraiser shall be required to fulfill the requirements of this section if the certification is not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be completion of 300 class hours as specified in the required core curriculum Section 7.

(3) The applicant shall complete the 15-Hour National USPAP Course and examination.

(4) An applicant shall demonstrate that his or her education includes the core courses listed in these criteria, with particular emphasis on nonresidential properties.

(5) An applicant for the certified general real property certificate shall hold a bachelors degree or higher from an accredited college or university, unless the requirements of the subsection (6) of this section are satisfied.

(6)(a) In lieu of the bachelors degree, an applicant for the certified general real property appraiser credential shall successfully pass thirty (30) semester credit hours or its equivalent in the following collegiate level subject matter courses from an accredited college, junior college, community college or university:

1. English Composition;
2. Micro Economics;
3. Macro Economics;
4. Finance;
5. Algebra, Geometry, or higher mathematics;
6. Statistics;
7. Introduction to Computers-Word processing/spreadsheets;
8. Business or Real Estate Law; and
9. Two (2) elective courses in accounting, geography, ageconomics, business management, or real estate.

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program® (CLEP) examinations and issues a transcript for the examination showing its approval, it shall be accepted as credit for the college course.

Section 8. Effective January 1, 2008, the required core curriculum and class hours for each of the types or classification of licensees or certificate holders shall be as follows:

(1) Associate Real Property Appraiser consisting of ninety (90) [seventy-five (75)] class hours.

- (a) Basic appraisal principles-thirty (30) class hours.
- (b) Basic appraisal procedures-thirty (30) class hours.
- (c) Basic income property appraising-fifteen (15) class hours.
- (d) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) hours.

(2) Licensed real estate appraiser consisting of 150 class hours.

- (a) Basic appraisal principles- thirty (30) class hours.
- (b) Basic appraisal procedures-thirty (30) class hours.
- (c) Basic income property appraising-fifteen (15) class hours.
- (d) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.
- (e)[(d)] Residential market analysis and highest and best use-fifteen (15) class hours.
- (f)[(e)] Residential appraiser site valuation and cost approach-fifteen (15) class hours.
- (g)[(f)] Residential sales comparison and income approaches-thirty (30) class hours.
- (h)[(g)] Residential report writing and case studies-fifteen (15) class hours.

(i) Statistics, modeling and finance-fifteen (15) class hours

(j) Advanced residential applications and case studies-fifteen (15) class hours.

(3) Certified residential real estate appraiser consisting of 200 class hours.

- (a) Basic appraisal principles-thirty (30) class hours.
- (b) Basic appraisal procedures-thirty (30) class hours.
- (c) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.
- (d) Residential market analysis and highest and best use-fifteen (15) class hours.
- (e) Residential appraiser site valuation and cost approach-fifteen (15) class hours.
- (f) Residential sales comparison and income approaches-thirty (30) class hours.
- (g) Residential report writing and case studies-fifteen (15) class hours.

(h) Statistics, modeling and finance-fifteen (15) class hours.

(i) Advanced residential applications and case studies-fifteen (15) class hours.

(j) Appraisal subject matter electives-twenty (20) class hours.

(4) Certified general real estate appraiser consisting of 300 class hours.

- (a) Basic appraisal principles-thirty (30) class hours.
- (b) Basic appraisal procedures-thirty (30) class hours.
- (c) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.
- (d) General appraiser market analysis and highest and best use-thirty (30) class hours.
- (e) Statistics, modeling and finance-fifteen (15) class hours.
- (f) General appraiser site valuation and cost approach-thirty (30) class hours.
- (g) General appraiser sales comparison approach-thirty (30) class hours.
- (h) General appraiser income approach-sixty (60) class hours.
- (i) General appraiser report writing and case studies-thirty (30) class hours.
- (j) Appraisal subject matter electives-thirty (30) class hours.

(5) The required core curriculum classes shall cover the topics set out in this subsection.

(a) Basic appraisal principles.

1. Real property concepts and characteristics, including basic real property concepts, real property characteristics, and legal description.

2. Legal consideration including forms of ownership, public and private controls, real estate contracts, and leases.

3. Influences on real estate values, including governmental influences, economic influences, social influences, environmental, geographic and physical influences.

4. Types of value including market value and other value types.

5. Economic principles including classical economic principles and application and illustrations of the economic principles.

6. Overview of real estate markets and analysis including market fundamentals, characteristics, and definitions, supply analysis, demand analysis, use of market analysis.

7. Ethics and how they apply in appraisal theory and practice.

(b) Basic appraisal procedures.

1. Overview of approaches to value.

2. Valuation procedures.

a. Defining the problem;

b. Collecting and selecting data;

c. Analyzing;

d. Reconciling and final value opinion; and

e. Communicating the appraisal.

3. Property description.

a. Geographic characteristics of the Land or Site;

b. Geologic characteristics of the Land or Site;

c. Location and neighborhood characteristics;

d. Land/site considerations for highest and best use, and

e. Improvements-architectural styles and types of construction.

4. Residential applications.

(c) The 15-Hour National USPAP Course or its equivalent.

1. Preamble and ethics rules.

2. Standard 1.



3. Standard 2.
4. Standards 3 to 10.
5. Statements and advisory opinions.
- (d) Residential market analysis and highest and best use.
  1. Residential markets and analysis.
    - a. Market fundamentals, characteristics and definitions;
    - b. Supply analysis;
    - c. Demand analysis; and
    - d. Use of market analysis.
  2. Highest and best use.
    - a. Test constraints;
    - b. Application of highest and best use;
    - c. Special considerations;
    - d. Market analysis; and
    - e. Case studies.
- (e) Residential appraiser site valuation and cost approach.
  1. Site valuation.
    - a. Methods; and
    - b. Case studies.
  2. Cost approach.
    - a. Concepts and definitions;
    - b. Replacement or Reproduction cost new;
    - c. Accrued depreciation;
    - d. Methods of estimating accrued depreciation; and
    - e. Case studies.
- (f) Residential sales comparison and income approaches.
  1. Valuation principles & procedures-sales comparison approach.
  2. Valuation principles & procedures-income approach.
  3. Finance and cash equivalency.
  4. Financial calculator introduction.
  5. Identification, derivation and measurement of adjustments.
  6. Gross rent multipliers.
  7. Partial interests.
  8. Reconciliation.
  9. Case studies and applications.
- (g) Residential report writing and case studies.
  1. Writing and reasoning skills.
  2. Common writing problems.
  3. Form reports.
  4. Report options and USPAP compliance.
  5. Case studies.
- (h) Statistics, modeling and finance.
  1. Statistics.
  2. Valuation models (AVM's and mass appraisal).
  3. Real estate finance.
- (i) Advanced residential applications and case studies.
  1. Complex property, ownership and market conditions.
  2. Deriving and supporting adjustments.
  3. Residential market analysis.
  4. Advanced case studies.
- (j) General appraiser market analysis and highest and best use.
  1. Real estate markets and analysis.
    - a. Market fundamentals, characteristics and definitions;
    - b. Supply analysis; and
    - c. Demand analysis.
    - d. Use of market analysis.
  2. Highest and best use.
    - a. Test constraints;
    - b. Application of highest and best use;
    - c. Special considerations;
    - d. Market analysis; and
    - e. Case studies.
- (k) General appraiser sales comparison approach.
  1. Value principles.
  2. Procedures.
  3. Identification and measurement of adjustments.
  4. Reconciliation.
  5. Case studies.
- (l) General appraiser site valuation and cost approach.
  1. Site valuation.
    - a. Methods; and
    - b. Case studies;

2. Cost approach.
  - a. Concepts and definitions;
  - b. Replacement or Reproduction cost new;
  - c. Accrued depreciation;
  - d. Methods of estimating accrued depreciation; and
  - e. Case studies;
- (m) General appraiser income approach.
  1. Overview.
  2. Compound interest.
  3. Lease analysis.
  4. Income analysis.
  5. Vacancy and collection loss.
  6. Estimating operating expenses and reserves.
  7. Reconstructed income and expense statement.
  8. Stabilized net operating income estimate.
  9. Direct capitalization.
  10. Discounted cash flow.
  11. Yield capitalization.
  12. Partial interests.
  13. Case studies.
- (n) General appraiser report writing and case studies.
  1. Writing and reasoning skills.
  2. Common writing problems.
  3. Report options and USPAP compliance.
  4. Case studies.

J.W. GRABEEL, Chair

APPROVED BY AGENCY: December 6, 2007

FILED WITH LRC: December 14, 2007 at 11 a.m.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 2624 Research Park Drive, Suite 204 Lexington, Kentucky 40511, phone (859) 543-8943, fax (859) 543-0028.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the education requirements for certification for persons seeking certification after December 31, 2007.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the education requirements of certified and licensed appraisers after December 31, 2007.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the educational requirements for certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the educational requirements for applicants after December 31, 2007.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment removes the requirement that the experience component of license qualification is removed to allow persons who have otherwise completed the education and examination components two years to complete experience. It also amends the educational requirements to meet federal standards.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow applicants additional time to complete the experience requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.

(d) How the amendment will assist in the effective administration of the statutes: The standards of practice will assist by identifying the qualifications to acquire a certificate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

tive regulation: There are approximately three hundred persons currently involved in seeking certification by the board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicants will have additional time to obtain the experience required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying with the amendment.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement the changes made by this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was applied to ensure that each of the four levels of certification identify the education that is required for that level of certification.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3345

(2) State compliance standards. This administrative regulation requires compliance with the Real Property Appraiser Qualification Criteria and Interpretations which will be effective January 1, 2008 as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires that persons who are certified by the state must meet the criteria for certification as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

(5) Justification for imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 324A.020, 324A.035(3)(b) and 12 U.S.C. 3345.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY 705 KAR 4:250E

2007 HB 1, which was passed during the second special legislative session of 2007, requires the KDE to establish an energy technology engineering career track program for high school students. The bill provided for an appropriation of \$300,000 for FY 2007-2008 to be distributed to local school districts to support this work. The enacted bill requires the Kentucky Board of Education to promulgate an administrative regulation for the administration of the energy technology career track program. Approval by the Kentucky Board of Education of an emergency regulation is necessary to enable the Kentucky Department of Education to immediately begin work on developing the energy technology engineering career path program and the criteria to be followed in the distribution of grants to local school districts prior to the end of the 2007-2008 school year, consistent with the intent of the statute. The emergency administrative regulation will establish a process for the administration of the program, the approval of grant recipients, and the distribution of funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is being filed with the Regulations Compiler simultaneously with the emergency administrative regulation.

STEVE L. BESHEAR, Governor  
JON E. DRAUD, Commissioner

#### EDUCATION CABINET Kentucky Board of Education Department of Education (New Emergency Administrative Regulation)

705 KAR 4:250E. Energy Technology Engineering Career Pathway.

RELATES TO: KRS 158.808

STATUTORY AUTHORITY: KRS 156.070, 158.808

EFFECTIVE DATE: December 14, 2007

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.808 requires the Kentucky Department of Education to establish an energy technology engineering career pathway. This administrative regulation establishes a process for the Kentucky Board of Education to administer the energy technology engineering career track program, approve grant recipients, and distribute funds to local school districts.

Section 1. Definition. "Career pathway" means a coherent, articulated sequence of rigorous academic and career and technical courses, including dual credit opportunities, leading to a post-secondary degree or industry-recognized certification or licensure, that is developed, implemented, and maintained in partnership with secondary and postsecondary institutions, business, and employers.

Section 2. Application Process. (1) A Kentucky public school district shall be eligible to apply for a grant through a request for

proposal process.

(2) A local school district superintendent shall submit the application and have the approval of participating schools' school-based decision making councils and local board of education.

(3) A grant application shall indicate the fiscal agent as a local board of education.

(4) To be eligible for funding, an applicant school shall provide an energy career pathway which includes the following components:

(a) The Project Lead the Way middle school program Gateway to Technology, with content to include energy-related activities and the following Project Lead the Way pre-engineering courses at the high school level:

1. Introduction to Engineering Design;
2. Principles of Engineering;
3. Digital Electronics;

4. A specialized course in Energy and Power Technology, or integration of energy-related content and applications in each of the Project Lead the Way courses. The content shall include energy-related applications as developed by the Kentucky Department of Education, in consultation with representatives from the energy technology industry, the University of Kentucky Center for Applied Energy Research, the Council on Postsecondary Education, the Kentucky Community and Technical College System, Governor's Office of Energy Policy, local school districts, and Project Lead the Way; and

5. Engineering Design and Development, with content to include energy-related research and applications;

(b) The opportunity for students to participate in energy related internships or cooperative education with energy-related industries or postsecondary education;

(c) Matching funds that shall be allocated to directly support the implementation of the program, which may include other state, federal, local, or nonpublic sources, within the uses and conditions set forth by the source of those funds. Previously awarded Project Lead the Way state grants and local matches shall not be considered as matching funds for this program,

(d) Status as a registered Project Lead The Way site prior to disbursement of funds;

(e) Submission of seven (7) complete copies of the application plus an electronic copy.

Section 3 Selection of Grants. (1) The criteria for selection of applications for funding shall be based on the appropriateness and quality of the following:

(a) Process for identifying potential students and estimated enrollment in the Energy Technology Engineering Career Pathway;

(b) An implementation plan, which includes:

1. Computer availability, including hardware and software commonly used in related fields;
2. Teacher availability and certification;
3. Elementary school integration;
4. Middle school and high school program;
5. Measures of student progress to be utilized;
6. Instructional space;
7. Student Recruitment Plan, including recruitment of traditionally underserved populations;
8. Business and postsecondary partners and other education partnerships; and
9. Narrative of budget and timeline;

(c) Program evaluation to include annual graduate follow-up surveys;

(d) Level of individual school and district commitment for teacher professional development; and

(e) Narrative of budget and timeline, including the efficient and effective use of proposed grant funds and matching funds.

(2) An application shall be reviewed as follows:

(a) A team of evaluators shall review the applications; and

(b) The Kentucky Department of Education shall approve funding based upon the results of the review. Consideration may be given to provide for geographic diversity and the number of students to be served.

Section 4 Grant Allocations and Requirements. (1) The award

size or range of grants shall be determined by the Kentucky Department of Education.

(2) Allowable expenditures include:

(a) Laboratory equipment and instructional materials necessary for Project Lead the Way instruction;

(b) Computers and computer upgrades;

(c) Computer software required by Project Lead the Way;

(d) Laptop computer for the instructor;

(e) Travel expenses and registration fees for school counselors to attend the required Project Lead the Way counselors conference;

(f) Travel expenses and registration fees for teachers to attend the required Project Lead the Way summer teacher institutes;

(g) Resources and professional development for integrating energy activities in the curriculum; and

(h) Energy related instructional materials and equipment.

(3) State grant funds shall not be used to maintain, renovate, or build facilities or pay teacher salaries, but local district expenditures for these purposes may be included as matching funds.

(4) Monitoring of awarded grants shall include the following:

(a) Fiscal reports submitted quarterly to the Department of Education; and

(b) Annual program evaluation report on the implementation plan that outlines the project accomplishments related to the project need, objectives, and outcomes.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

JON E. DRAUD, Commissioner of Education

JOE BROTHERS, Chairperson

APPROVED BY AGENCY: December 12, 2007

FILED WITH LRC: December 14, 2007 at 10 a.m.

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows the Kentucky Department of Education to establish an Energy Technology Engineering Career Track Program as required by HB 1 which was enacted by the 2007 second special legislative session.

(b) The necessity of this administrative regulation: This energy administration regulation was necessary to implement the provisions of HB 1 to establish an Energy Technology Engineering Career Track Program and to award grants to local school districts to establish the program in their district.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for how the Energy Technology Engineering Career Track Program will be established and eligibility requirements for receiving a grant. The regulations also identifies the agencies that will be consulted in establishing the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The emergency regulation provides specific requirements for local school districts to be eligible for a grant to establish a Energy Technology Engineering Career Track Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statute: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, Career and Technical education coordinators, students, University of Kentucky Center for Applied Energy Research, Governor's Office of Energy Policy, Council on Postsecondary Education, Kentucky Community and Technical College system, Project Lead the Way staff, program staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The local school districts (superintendents, principals, Career and Technical Education coordinators) that submit an application for funding and receive approval for funding will be required to complete an application and successful candidates will need to implement an Energy Technology Engineering Career Pathway Program as outlined in the regulation. Students will need to take certain core courses to complete the program. University of Kentucky Center for Applied Energy Research, Governor's Office of Energy Policy, Council on Postsecondary Education, Kentucky Community and Technical College System, Project Lead the Way staff, and KDE staff will determine the energy-related curriculum content. CPE, KCTCS, and KDE staff will review and select candidates. KDE staff will be required to process the MOA and establish fiscal and programmatic reporting. KDE staff and UK Project Lead the Way staff will provide technical assistance to the successful programs.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A local school district choosing to participate will need to: Register and be approved as a Project Lead the Way site. Provide appropriate instructional space to meet PLTW facility criteria. Provide instructional staff to teach PLTW courses including energy technology components. Provide matching funds to support the implementation of the Energy Technology Career Pathway. Provide computers, other instructional equipment, and instructional materials to support the PLTW classes. Fund professional development for teachers who will be teaching PLTW courses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The local school districts who receive a grant will be providing matching funds to support the implementations of the program. The total cost of the program implementation in a school district is approximately \$100,000 in total, in addition to the teacher salaries.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky will have more students who are prepared for energy technology engineering related careers who will contribute to future research and development needs in the field of energy.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The cost to the Kentucky Department of Education will be in the form of staff time to provide technical assistance to local school districts. It is estimated that the first year will require twenty-five (25) percent of a program consultant's time, which is estimated to be valued at \$15,000.

(b) On a continuing basis: The annual cost after the first year will depend on the growth of the energy technology career pathways program over time, but the cost will be limited to staff time in providing technical assistance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds appropriated to Kentucky Department of Education.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Funding will be needed to sustain the implementation and expansion of this program in the initial school selected and future schools who have interest in implementing the program.

(8) State whether or not this administrative regulation estab-

lishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the regulation applies to all public school districts that apply for the grant.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? school districts which choose to participate.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.808.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The school districts selected to receive this grant will be required to provide matching funds of approximately \$50,000 plus the teachers' salaries.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Future revenue may be increased due to the contribution of the program graduates can have on energy research and development.

(c) How much will it cost to administer this program for the first year? The only cost will be staff time estimated to be twenty-five (25) percent of one position (\$15,000).

(d) How much will it cost to administer this program for subsequent years? If the program grows, additional staff time will be needed.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY 907 KAR 1:011E

This emergency administrative regulation is being promulgated to amend Medicaid eligibility in order to allow individuals to work and maintain, rather than forfeit, Medicaid eligibility. It is amended in conjunction with four (4) other administrative regulations accomplishing the same goal: 907 KAR 1:604E, Recipient cost sharing; 907 KAR 1:640E, Income standards for Medicaid; 907 KAR 1:645E, Resource standards for Medicaid; and 907 KAR 1:900E, KYHealth Choices benefit plans. This action must be taken on an emergency basis to protect the health, safety, and welfare of recipients by ensuring access to necessary care. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor  
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Administration and Financial Management  
(Emergency Amendment)

907 KAR 1:011E. Technical eligibility requirements.

RELATES TO: KRS 205.520, 341.360, 42 C.F.R. 435, 403, 45 C.F.R. 233.100, 8 U.S.C. 1101, 1153(a)(7), 1157, 1158, 1182(d)(5), 1231(b)(3), 1253(h), 1522, 1612, 1613, 1622, 1641, 38 U.S.C. 101, 107, 1101, 1301, 1304, 5303A, 42 U.S.C. 402, 416, 423, 1382c, 1383c, 1395i, 1396a, Pub.L. 109-171

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6481-205.6497, 42 U.S.C. 1396a(a)(10), (r)(2), b(f), d(q)(2)(B), 1397aa, Pub.L. 106-170

EFFECTIVE: November 20, 2007

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, department for Medicaid Services has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the technical eligibility requirements of the Medicaid program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 218A.010(3) means the Cabinet for Health and Family Services].

(2) "Child" means a person who:

(a) 1.a. Is under the age of eighteen (18); or

b. Is under age nineteen (19) if the person is:

(i) A full-time student in a secondary school or the equivalent level of vocational or technical training; and

(ii) Expected to complete the program before age nineteen

(19).

2. Is not self-supporting;

3. Is not a member of the Armed Forces of the United States, and

4. If previously emancipated by marriage, has returned to the home of his parents, or to the home of another relative; or

(b) Has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(l)(1).

(3) "Evidence of identity" means:

(a) A current state driver's license or state identity document bearing the individual's picture;

(b) A certificate of Indian Blood or other United States American Indian or Alaska Native tribal document; or

(c) For a child who is age sixteen (16) or younger:

1. A school identification card with a photograph;

2. A military dependent's identification card, if it contains a photograph;

3. A school record that shows the:

a. Date and place of birth; and

b. Parent or parents' name;

4. A clinic, doctor, or hospital record showing date of birth;

5. A daycare or nursery school record showing date and place of birth; or

6. An affidavit signed under penalty of perjury by a parent or guardian attesting to the child's identity.

(4) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or step-parent if two (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

(5) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving supplement security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets income standards established in 907 KAR 1:640.

Income standards for Medicaid, and

(e) Meets resource standards established in 907 KAR 1:645.

Resource standards for Medicaid.

(6) "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married; and

(c) Has a minor child in his care

(7)(6) "Satisfactory documentary evidence of citizenship or nationality" means:

(a) A United States passport;

(b) A Certificate of Naturalization (DHS Form N-550 or N-570);

(c) A Certificate of United States Citizenship (DHS Form N-560 or N-561);

(d) One (1) of the following documents submitted with evidence of identity, if a document identified in paragraphs (a) through (c) of this subsection is not available or cannot be obtained:

1. A United States birth certificate;

2. A Certification of Birth issued by the Department of State (Form DS-1350);

3. A Report of Birth Abroad of a Citizen of the United States (Form FS-240);

4. A Certification of Birth Abroad (FS-545);

5. A United States Citizen Identification Card (DHS Form I-197);

6. An American Indian Card (I-872);

7. A final adoption decree,

8. Evidence of civil service employment by the United States government before June 1976; or

9. An official military record of service showing a United States place of birth;

(e) One (1) of the following documents submitted with evidence of identity if a document identified in paragraphs (a) through (d) of this subsection is not available or cannot be obtained:

1. An extract of a United States hospital record of birth that:

a. Was established at the time of a person's birth;

b. Was created at least five (5) years before the initial application date; and

c. Indicates a United States place of birth; or

2. A life, health, or other insurance record that:

a. Shows a United States place of birth; and

b. Was created at least five (5) years before the initial application date; or

(f) One (1) of the following documents submitted with evidence of identity if a document identified in paragraphs (a) through (e) of this subsection is not available or cannot be obtained, the applicant alleges citizenship, and nothing exists to indicate the person is not a citizen:

1. Federal or state census record showing:

a. United States citizenship; or

b. A United States place of birth;

2. Institutional admission papers that:

a. Are from a nursing facility, skilled nursing facility, or other institution;

b. Were created at least five (5) years before the initial application date; and

c. Indicate a United States place of birth;

3. Medical record that:

a. Was created at least five (5) years before the initial application date; and

b. Indicates a United States place of birth unless the application is for a child under age five (5); or

4. Written affidavit by at least two (2) individuals:

a. Of whom one (1) is not related to the applicant,

b. Who have personal knowledge of the event establishing the applicant's claim of citizenship; and

c. Who provide proof of their own citizenship and identity.

(8)(7) "Qualified alien" means an alien who, at the time the alien applies for or receives Medicaid, meets the requirements established in Section 5(12) of this administrative regulation.

(9)(8) "Veteran" is defined in 38 U.S.C. 101(2).

Section 2. The Categorically Needy. (1) An individual receiving Title IV-E benefits, Supplemental Security Income, or Optional or Mandatory State Supplementation shall be eligible for Medicaid as a categorically-needy individual.

(2) The following classifications of needy persons shall be included in the program as categorically needy and thus eligible for Medicaid participation:

(a) A child in a foster family care or private nonprofit child-caring institution dependent in whole or in part on a governmental or private agency;

(b) A child in a psychiatric hospital, psychiatric residential treatment facility, or medical institution for the mentally retarded;

(c) A pregnant woman;

(d) A child of unemployed parents;

(e) A child in a subsidized adoption dependent in whole or in part on a governmental agency;

(f) A child (but not his parents) who:

1. Would have been financially eligible for Aid to Families with Dependent Children benefits using the AFDC methodologies in effect on July 16, 1996; and

2. Meets the definition of Section 1(2) of this administrative regulation;

(g) A qualified severely impaired individual as specified in 42 U.S.C. 1396a(a)(10)(A)(i)(II) and 1396d (to the extent the coverage is mandatory in this state);

(h) An individual who loses SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in his child's insurance benefits based on disability as specified in 42 U.S.C. 1383c;

(i) An individual specified in 42 U.S.C. 1383c who:

1. Loses SSI or state supplementation payments as a result of receipt of benefits pursuant to 42 U.S.C. 402(e) or (f),

2. Would be eligible for SSI or SSP except for these benefits; and

3. Is not entitled to hospital insurance benefits under the Medicare program;

(j) A disabled widow, widower, or disabled surviving divorced spouse, who would be eligible for SSI except for entitlement to an old-age, survivors, or disability insurance (OASDI) benefit resulting from a change in the definition of disability;

(k) A child who:

1. Was receiving supplemental security income on August 22, 1996; and

2. Except for the change in definition of childhood disability would continue to receive supplemental security income; or

(l) A person with hemophilia who would be eligible for supplemental security income except he received a settlement in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation".

(3) The classifications of needy persons listed in this subsection shall be included in the program as categorically-needy and thus eligible for Medicaid participation as limited by the provisions of this subsection.

(a) A family which correctly received Medicaid for three (3) of the last six (6) calendar months, and would have been terminated from receipt of AFDC using AFDC methodologies in effect on July 16, 1996 as a result of new or increased collection of child or spousal support, shall be eligible for extended Medicaid coverage for four (4) consecutive calendar months beginning with the first month the family would have been ineligible for AFDC.

(b) A family which would have been terminated from AFDC assistance using the AFDC methodologies in effect on July 16, 1996 because of increased earnings, hours of employment or loss of earnings disregards shall be eligible for up to twelve (12) months of extended Medicaid.

(c) A child born to a woman eligible for and receiving Medicaid shall be eligible for Medicaid as of the date of his birth if:

1. The child:

a. Has not reached his first birthday; and  
b. Resides in the household of the woman; and

2. The woman remains, or would remain if pregnant, eligible for the assistance.

(d)1. Except as provided in subparagraph 3 of this paragraph, an individual in an institution meeting appropriate patient status

criteria who, if not institutionalized, would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income shall be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income.

2. Except as provided in subparagraph 3 of this paragraph, eligibility for a similar hospice participant or similar participant in a waiver project of home and community based services for the mentally retarded or the aged, blind or disabled shall be determined using the method established in subparagraph 1 of this subsection.

3. Eligibility of an institutionalized individual in an intermediate care facility for the mentally retarded and developmentally disabled (ICF/MR/DD) or supports for community living (SCL) for an individual with mental retardation or a developmental disability waiver meeting appropriate patient status criteria whose gross income exceeds 300 percent of the SSI benefit amount shall be determined by comparing the cost of the individual's care to the individual's income.

(e) A woman during pregnancy, and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy, or a child under six (6) years of age, as specified in 42 U.S.C. 1396a(l)(1), shall meet the income requirements for this eligibility group as specified in 907 KAR 1:640, Income standards for Medicaid.

(f) If an eligible child is receiving covered inpatient services on a birthday which will make him ineligible due to age, the child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the child remains otherwise eligible except for age.

(g) A child who has attained six (6) years of age but has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(l)(1) shall meet income requirements established in 907 KAR 1:640, Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act, Section 2(2)(c).

(h) If federal Medicaid-matching funds are available to cover the costs of the program, an optional targeted low-income child as established in 907 KAR 4:020, Section 2(1) who has not attained the age of nineteen (19) years as specified in 42 U.S.C. 1396a(l)(1) shall meet the income requirements established in 907 KAR 1:640, Income standards for Medicaid, Section 2(2)(f).

Section 3. The Medically Needy. (1) An individual, including a child pursuant to Section 2(2)(f) of this administrative regulation or a pregnant woman who has sufficient income to meet the individual's basic maintenance needs, may apply for Medicaid with need determined in accordance with the income and resource standards established in 907 KAR 1:640, Income standards for Medicaid, through 907 KAR 1:665, Special income requirements for hospice and home and community based services (HCBS), if the individual meets:

(a) The income and resource standards of the medically needy program established in 907 KAR 1:640, Income standards for Medicaid and 907 KAR 1:645, Resource standards for Medicaid; and

(b) The technical requirements of the appropriate categorically needy group identified in Section 2 of this administrative regulation.

(2) The medically needy eligible groups shall include:

(a) A pregnant woman during the course of her pregnancy; [and]

(b) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, and who shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated); and

(c) A Medicaid works individual.

Section 4. Qualified Medicare Beneficiaries, Qualified Disabled and Working Individuals, Specified Low-Income Medicare Beneficiaries and Medicare Qualified Individuals (QI). (1) Coverage shall be extended to a qualified Medicare beneficiary as specified in 42 U.S.C. 1396a(a)(10)(E), subject to the income as shown in 907 KAR 1:640, Income standards for Medicaid, and resource limitations shown in 907 KAR 1:645, Resource Standards for Medicaid.

and for the scope of benefits specified in 907 KAR 1:006, Coverage of and payments for services for persons eligible for benefits under both Title XIX and XVIII. A qualified Medicare beneficiary shall:

(a) Be eligible for and receiving Medicare Part A benefits;  
(b) Be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made; and

(c) Not be eligible for benefits as a qualified Medicare beneficiary eligible individual:

1. Retroactively; or
2. For the month in which the determination was made.

(2) A qualified disabled and working individual as defined in 42 U.S.C. 1396d(s) shall be eligible under Medicaid for payment of his Medicare Part A premiums as established in 907 KAR 1:006, Coverage of and payments for services for persons eligible for benefits under both Title XIX and XVIII.

(3) A specified low-income Medicare beneficiary as defined in 42 U.S.C. 1396a(a)(10)(E)(iii) shall be eligible under Medicaid for payment of the Medicare Part B premiums.

(4) A Medicare qualified individual group 1 (QI-1) as established in 42 U.S.C. 1396a(a)(10)(E)(iv)(I) shall be eligible for payment of all of the Medicare Part B premium.

Section 5. Technical Eligibility Requirements. The technical eligibility factors for a family or individual included as categorically needy under Section 2 of this administrative regulation or as medically needy under Section 3 of this administrative regulation shall be:

(1) A child in foster care, a private institution, psychiatric hospital, psychiatric residential treatment facility, or mental retardation institution shall meet the definition in Section 1(2) of this administrative regulation;

(2) Except as provided by Section 2 of this administrative regulation, a pregnant woman shall be eligible upon medical proof of pregnancy;

(3) At the time of application, unemployment relating to eligibility of both parents and children shall be determined using the following criteria:

(a)1. Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if:

- a. The work is intermittent; and
- b. The excess is of a temporary nature as evidenced by the fact that the individual:

(i) Was under the 100 hour standard for the prior two (2) months; and

(ii) Is expected to be under the standard during the next month;

2. Within twelve (12) months prior to application, a parent received unemployment compensation; or

3. A parent is receiving or has been found ineligible for unemployment compensation; and

(b) A parent shall not have refused suitable employment without good cause as determined in accordance with 45 C.F.R. 233.100(a)(3)(ii);

(4) Subsection (3)(a) of this section shall not apply if a change is made in a Medicaid case or if a case is recertified;

(5) An aged individual shall be at least sixty-five (65) years of age;

(6) A blind individual shall meet the definition of blindness as contained in 42 U.S.C. 416 and 42 U.S.C. 1382c relating to retirement, survivors, and disability insurance (RSDI) or supplemental security income (SSI);

(7) A disabled individual shall meet the definition of permanent and total disability as contained in 42 U.S.C. 423(d) and 42 U.S.C. 1382c(a)(3) relating to RSDI and SSI;

(8) Using AFDC methodologies in effect on July 16, 1996, a family who loses Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to twelve (12) months of extended medical assistance for family members included in the medical assistance unit prior to losing Medicaid eligibility. The extended medical assistance shall be divided into two (2) transitional six (6) month benefit periods. The family shall meet the eligibility and reporting requirements for each transitional benefit period

established in this subsection.

(a) The first transitional six (6) month benefit period shall begin with the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996.

1. To be eligible for this transitional benefit period, the family shall:

a. Have correctly received Medicaid assistance in three (3) of the six (6) months immediately preceding the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996,

b. Have a dependent child living in the home; and

c. Report earnings and child care costs no later than the 21st day of the fourth month.

2. If the family no longer has a dependent child living in the home, medical assistance shall be terminated the last day of the month the family no longer includes a dependent child

3. If the reporting requirements are not met, the Medicaid benefits shall be denied for the second transitional six (6) month benefit period.

(b)1. To continue to receive Medicaid for the optional second transitional six (6) month benefit period, the family shall:

a. Have received medical assistance for the entire first transitional six (6) month period and met the reporting requirements;

b. Have a dependent child living in the home;

c. Have gross income minus child care cost equaling less than 185 percent of the federal poverty income level;

d. Report earnings and child care costs no later than the 21st day of the fourth month, the seventh month, and the tenth month; and

e. During the immediately preceding three (3) months, have a caretaker relative who shall have been:

(i) Employed; or

(ii) If unemployed in one (1) or more months, unemployed due to involuntary loss of employment, illness or other good cause established to the satisfaction of the Medicaid program in accordance with paragraph (c) of this subsection.

2. If a family no longer has a dependent child living in the home, Medicaid shall be terminated the last day of the month the family no longer includes a dependent child.

3. If the family's income exceeds the income standard or the family does not meet the reporting requirements, except for good cause established to the satisfaction of the Medicaid program in accordance with paragraph (c) of this subsection, the medical assistance shall be terminated the last day of the appropriate reporting month.

(c) Good cause shall exist under the following circumstances:

1. The specified relative was out-of-town for the reporting month;

2. An immediate family member living in the home was institutionalized or died during the reporting month;

3. The assistance group was the victim of a natural disaster including a flood, storm, earthquake or serious fire; or

4. The assistance group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form;

(9) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.

(a) If a parent is not included in the case, one (1) other caretaker relative may be included to the same extent he would have been eligible in the Aid to Families with Dependent Children program using the AFDC methodology in effect on July 16, 1996.

(b) A caretaker relative shall include:

1. Grandfather;
2. Grandmother;
3. Brother;
4. Sister;
5. Uncle;
6. Aunt;
7. Nephew;
8. Niece;
9. First cousin;
10. A relative of the half-blood;
11. A preceding generation denoted by a prefix of:  
a. Grand,



- b. Great; or
- c. Great-great; or

12. A stepfather, stepmother, stepbrother, or stepsister;

(10) An applicant who is deceased shall have eligibility determined in the same manner as if he were alive, to cover medical expenditures during the terminal illness;

(11) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member is pregnant, the unborn child shall be considered as a family member for budgeting purposes;

(12) The following citizenship and residency requirements shall be applicable:

(a) To be eligible for Medicaid, an applicant or recipient shall be:

1.a. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next re-determination of continued eligibility. The cabinet:

(i) Shall exempt an applicant or recipient who currently receives Medicare or SSI or who no longer receives Medicare or SSI, but has received one (1) of them in the past, from providing further documentation of citizenship or nationality;

(ii) Shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant's or recipient's behalf; and

(iii) May use a cross match with the cabinet's Office of Vital Statistics to document a birth record or use a cross match with a federal or state governmental, public assistance, law enforcement, or corrections agency's data system to establish identity if the agency establishes and certifies true identity of individuals;

b. Except as provided in paragraph (b) of this subsection, a qualified alien who entered the United States before August 22, 1996 and is:

(i) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

(ii) Granted asylum pursuant to 8 U.S.C. 1158;

(iii) A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

(iv) Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

(v) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

(vi) Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;

(vii) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;

(viii) A battered alien pursuant to 8 U.S.C. 1641(c);

(ix) A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

(x) On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

(xi) The spouse or unmarried dependent child of an individual described in subclause (ix) or (x) of this clause or the unmarried surviving spouse of an individual described in subclause (ix) or (x) of this clause if the marriage fulfills the requirements established in 38 U.S.C. 1304; or

(xii) An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

c. A qualified alien who entered the United States on or after August 22, 1996 and is:

(i) Granted asylum pursuant to 8 U.S.C. 1158;

(ii) A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

(iii) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h) as in effect prior to April 1, 1997 or 8 U.S.C. 1231(b)(3);

(iv) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;

(v) A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

(vi) On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

(vii) The spouse or unmarried dependent child of an individual described in subclause (v) or (vi) of this clause or the unmarried surviving spouse of an individual described in subclause (v) or (vi) of this clause if the marriage fulfills the requirements established in 38 U.S.C. 1304;

(viii) An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

(ix) An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and

2. A resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403.

(b) A qualified or nonqualified alien shall be eligible for medical assistance under the following circumstances and conditions:

1. The alien shall meet the income, resource and categorical requirements of the Medicaid Program;

2. The alien shall have, or have had within at least one (1) of the three (3) months prior to the month of application, an emergency medical condition not related to an organ transplant procedure, which shall be a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

3. Approval of eligibility shall be for a time limited period, with that period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibility period shall be extended for an appropriate period of time upon presentation to the department of written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period; and

4. The Medicaid benefits to which the alien is entitled shall be limited to the medical care and services (including limited follow-up) necessary for the treatment of the emergency medical condition of the alien;

(13) An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met and the applicant is not enrolled in a managed care partnership.

(a) Except as provided in paragraphs (b) and (c) of this subsection, the effective date of Medicaid shall be the first day of the month of eligibility.

(b) For an individual eligible on the basis of desertion, a period of desertion shall have existed for thirty (30) days, and the effective date of eligibility shall not precede the first day of the month of application.

(c) For an individual eligible on the basis of utilizing his excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met;

(14) Benefits shall be denied to a family for a month in which a parent with whom the child is living is, on the last day of the month, participating in a strike, and the individual's needs shall not be considered in determining eligibility for Medicaid for the family if, on the last day of the month, the individual is participating in a strike. A strike shall include a concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees;

(15) A caretaker relative (but not a child) removed from a family related Medicaid only case due to failure to meet a technical eligibility requirement shall not be eligible for Medicaid as a medically needy individual unless the individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which the individual has been removed; and



(16) A caretaker relative, but not a child, who is ineligible for K-TAP benefits for failure to comply with K-TAP work requirements shall not be eligible for medical assistance unless the individual is eligible as a pregnant woman.

Section 6. Institutional Status. An individual shall not be eligible for Medicaid if the individual is a:

(1) Resident or inmate of a nonmedical public institution except as provided in Section 7 of this administrative regulation;

(2) Patient in a state tuberculosis hospital unless he has reached age sixty-five (65);

(3) Patient in a mental hospital or psychiatric facility unless the individual is:

(a) Under age twenty-one (21);

(b) Under age twenty-two (22) if he was receiving inpatient services on his 21st birthday; or

(c) Sixty-five (65) years of age or over; or

(4) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases, unless the individual has reached age sixty-five (65).

Section 7. Emergency Shelters. An individual or family group who is in an emergency shelter for a temporary period of time shall be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions shall be as follows:

(1) The individual or family group shall:

(a) Be a resident of an emergency shelter no more than six (6) months in any nine (9) month period; and

(b) Not be in the facility serving a sentence imposed by the court, or awaiting trial; and

(2) Eligibility for Medicaid shall have existed immediately prior to admittance to the shelter, or it shall exist immediately after leaving the shelter.

Section 8. Application for Other Benefits. (1) As a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement, and disability benefit to which he is entitled, unless he can show good cause for not doing so.

(a) Good cause shall be considered to exist if other benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions.

(b) Annuities, pensions, retirement, and disability benefits shall include:

1. Veterans' compensations and pensions;

2. Retirement and survivors disability insurance benefits;

3. Railroad retirement benefits;

4. Unemployment compensation; and

5. Individual retirement accounts.

(2) An applicant or recipient shall not be required to apply for federal benefits if:

(a) The federal law governing that benefit specifies that the benefit is optional; and

(b) The applicant or recipient believes that applying for the benefit would be to his disadvantage.

(3) An individual who would be eligible for supplemental security income (SSI) but has not made application shall not be eligible for Medicaid.

Section 9. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have made an assignment to the Cabinet for Health and Family Services of any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 10. Third-party Liability as a Condition of Eligibility.

(1)(a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the Cabinet for Health and Family Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid program unless the individual has good cause for refusing to cooperate.

(b) Good cause for failing to cooperate shall exist if cooperation:

1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;

2. Is not in a child's best interest because the child was conceived as a result of rape or incest; or

3. May interfere with adoption considerations or proceedings.

(2) A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 11. Provision of Social Security Numbers. (1) Except as provided in subsections (2) and (3) of this section, an applicant or recipient of Medicaid shall provide a social security number as a condition of eligibility.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration if appropriate application for the number has been made.

(3) If the parent or caretaker relative and the child, unless the child is a deemed eligible newborn, refuses to cooperate with obtaining a social security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failure to meet technical requirements.

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 15, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Stuart Owen 502 564-6204 or Lisa Lee 502 564-6890

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to technical eligibility requirements for Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to technical eligibility requirements for Medicaid recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to technical eligibility requirements for Medicaid recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to technical eligibility requirements for Medicaid recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment results from a congressional initiative to encourage states to adopt the option of allowing individuals with disabilities to purchase Medicaid coverage that is necessary to enable such individuals to maintain employment. The initiative creates a new Medicaid eligibility group known as Medicaid individuals. Currently, individuals receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) who choose to work, lose Medicaid health benefits because their income exceeds the allowable limit. This initiative will allow individuals with disabilities who choose to work and whose income is less than or equal to 250% of the federal poverty level the opportunity to purchase Medicaid coverage by paying a premium. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue return-

ing to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to extend Medicaid coverage to individuals with disabilities who work. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect individuals with disabilities between the ages of sixteen (16) and sixty-five (65) who choose to work and whose income is less than or equal to 250% of the federal poverty level

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Individuals choosing Medicaid coverage via this option must pay a monthly premium in order to receive benefits under this program. In addition, recipients must pay nominal copayments for specified services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Members eligible via the Medicaid works option will be subject to pharmacy and medical copayments that are capped at \$225 each per year per recipient. Therefore, recipients the maximum amount of co-payments per recipient will be \$450 per year. In addition, recipients will be responsible for a monthly premium based on income levels. Premiums range from thirty-five (35) dollars to fifty-five (55) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) Individuals eligible via the Medicaid works option will receive pharmacy and medical benefits through the Medicaid program. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the system modifications will cost \$36,275.

(b) On a continuing basis: DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year; however, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. Additionally, DMS anticipates

that sixty-five (65) percent of recipients expected to enroll for coverage via the Medicaid works option will already be enrolled in another Medicaid Program. Considering all factors, DMS projects total annual costs to be \$211,200, of which \$147,840 would be federal funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act, matching funds from general fund appropriations, and monthly premium payments made by recipients participating in the program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding will be necessary as DMS anticipates any increased cost will be absorbed within the existing Medicaid budget.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes monthly premium fees for recipients eligible via the Medicaid works option.

(9) Tiering: Is tiering applied? Tiering is applied to monthly premium amounts. The monthly premium is based on income brackets in order to make the program affordable to individuals in the lower income brackets. Recipients whose monthly income is below 100% of the federal poverty level will pay no premium while recipients above this level will vary with each increase of fifty (50) percent or more.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate

The Centers for Medicare and Medicaid Services (CMS) does not mandate that state Medicaid programs cover working individuals who are disabled, however, relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. CMS does not mandate that state Medicaid programs cover working individuals who are disabled; however, relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f) and 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170. Provisions established in this administrative regulation conform to the federal requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, than federal, requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, than federal, requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect an organization that chooses to hire an individual with a disability.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42

U.S.C. 1396b(f) and 42 U.S.C. d(q)(2)(B), and Pub.L. 106-170. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that the Medicaid Management Information System (MMIS) modifications associated with this initiative will cost approximately \$36,275.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the enhanced coverage may result in additional cost; however, the measures are necessary to enhance access to health services. DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year. However, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. In addition, research shows that sixty-five (65) percent of individuals expected to participate in this option were already enrolled in another Medicaid Program. DMS anticipates offsets in premiums and, due to the fact that approximately sixty-five (65) percent of recipients in this program would move from another Medicaid program, total annual costs are expected to be \$211,200, of which \$147,840 would be federal funds.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

#### STATEMENT OF EMERGENCY 907 KAR 1:038E

This emergency administrative regulation is being promulgated to update hearing and vision coverage to current industry practice in order to encourage provider participation and ensure recipient access to necessary care. Specific codes and procedures, consistent with current industry practice, are being covered; procedures previously only covered in physicians' office will be covered in audiologists' offices as well, and lens coverage shall be limited to lenses which are polycarbonate and scratch coated in order to protect recipient safety. This action must be taken on an emergency basis to protect the health, safety, and welfare of recipients by ensuring access to necessary care and to protect recipient safety. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor  
MARK D. BIRDWHISTELL, Secretary

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Hospitals and Provider Operations (Emergency Amendment)

#### 907 KAR 1:038E. Hearing and Vision Program services.

RELATES TO: KRS 205.520, 334.010(4), (9), 334A.020(5), 334A.030, 42 C.F.R. [440.140;] 441.30, 447.53, 457.310, 42 U.S.C. 1396a, b, d, 1396r-6

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3); EO-2904-726]

EFFECTIVE: November 20, 2007

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the hearing services and vision [program] services for which payment shall be made by the Medicaid Program.

Section 1. Definitions. (1) "Audiologist" is defined by KRS 334A.020(5).

(2) "Comprehensive choices" means a benefit plan for an individual who:

(a) Meets the nursing facility patient status criteria established in 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services;

(b) Receives services through either:

1. A nursing facility in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services;

2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090, Acquired brain injury services;

3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160, Home and community based waiver services; or

4. The Model Waiver II Program in accordance with 907 KAR 1:595, Model Waiver II services and payments; and

(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R.

(3)(2) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(4)(3) "Department" means the Department for Medicaid Services or its designee.

(5)(4) "Emergency" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 447.53.

(6)(5) "Family choices" means a benefit plan for an individual who:

(a) Is covered pursuant to:

1. 42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u - 1;  
2. 42 U.S.C. 1396a(a)(52) and 1396r - 6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);

3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(i)(1)(B);

4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(i)(1)(C);

5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(i)(1)(D); or

6. 42 C.F.R. 457.310; and

(b) Has a designated package code of 2, 3, 4, or 5.

(7)(6) "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following

populations:

(a) Caretaker relatives who:

1. Receive K-TAP and are deprived due to death, incapacity, or absence;
2. Do not receive K-TAP and are deprived due to death, incapacity, or absence; or
3. Do not receive K-TAP and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services; or

2. Receive SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services;

(c) Blind individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services;

(d) Disabled individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services, including children, or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services;

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services;

(f) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services;

(g) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services; or

(h) Pregnant women.

(8) "Hearing instrument" is defined by KRS 334.010(4).

(9)(f) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130, Medical necessity and clinically appropriate determination basis.

(10)(8) "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 447.53

(11)(9) "Optimum choices" means a benefit plan for an individual who:

(a) Meets the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services;

(b) Receives services through either:

1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145, Supports for community living services for an individual with mental retardation or a developmental disability; and

(c) Has a designated package code of S, T, U, V, W, X, Z, O, or 1.

(12) "Specialist in hearing instruments" is defined by KRS 334.010(9).

Section 2. Hearing Services. (1) All hearing coverage shall be:

(a) Limited to an individual under age twenty-one (21); and

(b) Provided in accordance with the Hearing Program Manual.

(2) Unless a recipient's health care provider demonstrates that services in excess of the following limitations are medically necessary, reimbursement for services provided by an audiologist licensed pursuant to KRS 334A.030 [a-certified-audiologist] to a recipient shall be limited to:

(a) The following procedures which shall be covered only if a recipient is referred, by a physician, to an audiologist licensed pursuant to KRS 334A.030:

Code	Procedure
92552	Pure Tone audiometry (threshold), air only
92555	Speech audiometry threshold
92556	Speech audiometry threshold; with speech recognition
92557	Comprehensive audiometry eval
92567	Tympanometry
92568	Acoustic reflex testing
92579	Visual reinforcement audiometry
92585	Auditory evoked potentials
92587	Evoked otoacoustic emissions
92588	Complete or diagnostic evaluation (comparison of transient or distortion product otoacoustic emissions at multiple levels and frequency)
92541	Spontaneous nystagmus test
92542	Positional nystagmus test
92543	Caloric vestibular test
92544	Optokinetic nystagmus test
92545	Oscillating tracking test
92546	Sinusoidal vertical axis rotational testing
92547	Use of vertical electrodes

(b) Complete hearing evaluation;

(c)(b) Hearing instrument[aid] evaluation;

(d)1.(e)- Three (3) follow-up visits within the six (6) month period immediately following fitting of a hearing instrument[aid]; and

2. A follow-up visit shall be related to the proper fit and adjustment of the[that] hearing instrument[aid]; and

(e)(d) One (1) additional follow-up visit at least six (6) months following the fitting of a hearing instrument[aid].

(3) Hearing instrument[aid] benefit coverage shall:

(a) Be for a hearing instrument[aid] model recommended by an audiologist licensed pursuant to KRS 334A.030[a-certified-audiologist] if the model is available through a Medicaid-participating specialist in hearing instruments;[hearing-aid-dealer, and]

(b) Not exceed \$800 per ear every thirty-six (36) months; and

(c) Be limited to the following procedures:

Code	Procedure
V5010	Assessment for Hearing instrument
V5011	Fitting, Orientation, Checking of Hearing instrument
V5014	Repair, Modification of Hearing Instrument
V5015	Hearing Instrument Repair Professional Fee
V5020	Conformity Evaluation
V5030	Hearing Instrument, Monaural, Body Aid Conduction
V5040	Hearing Instrument, Monaural, Body Worn, Bone Conduction
V5050	Hearing Instrument, Monaural, In the Ear Hearing

V5060	Hearing Instrument, Monaural, Behind the Ear Hearing
V5070	Glasses, Air Conduction
V5080	Glasses, Bone Conduction
V5090	Dispensing Fee, Unspecified Hearing Instrument
V5095	Semi-Implantable Middle Ear Hearing Prosthesis
V5100	Hearing Instrument, Bilateral, Body Worn
V5120	Binaural, Body
V5130	Binaural, In the Ear
V5140	Binaural, Behind the Ear
V5150	Binaural, Glasses
V5160	Dispensing Fee, Binaural
V5170	Hearing Instrument, Cros, In the Ear
V5180	Hearing Instrument, Cros, Behind the Ear
V5190	Hearing Instrument, Cros, Glasses
V5200	Dispensing Fee, Cros
V5210	Hearing Instrument, Bicros, In the Ear
V5220	Hearing Instrument, Bicros, Behind the Ear
V5230	Hearing Instrument, Bicros, Glasses
V5240	Dispensing Fee, Bicros
V5241	Dispensing Fee, Monaural Hearing Instrument, Any Type
V5242	Hearing Instrument, Analog, Monaural, CIC (Completely In the Ear Canal)
V5243	Hearing Instrument, Analog, Monaural, ITC (In the Canal)
V5244	Hearing Instrument, Digitally Programmable Analog, Monaural, CIC
V5245	Hearing Instrument, Digitally Programmable Analog, Monaural, ITC
V5246	Hearing Instrument, Digitally Programmable Analog, Monaural, ITE (In the Ear)
V5247	Hearing Instrument, Digitally Programmable Analog, Monaural, BTE (Behind the Ear)
V5248	Hearing Instrument, Analog, Binaural, CIC
V5249	Hearing Instrument, Analog, Binaural, ITC
V5250	Hearing Instrument, Digitally Programmable Analog, Binaural, CIC
V5251	Hearing Instrument, Digitally Programmable Analog, Binaural, ITC
V5252	Hearing Instrument, Digitally Programmable, Binaural, ITE
V5253	Hearing Instrument, Digitally Programmable, Binaural, BTE
V5254	Hearing Instrument, Digital, Monaural, CIC
V5255	Hearing Instrument, Digital, Monaural, ITC
V5256	Hearing Instrument, Digital, Monaural, ITE
V5257	Hearing Instrument, Digital, Monaural, BTE
V5258	Hearing Instrument, Digital, Binaural, CIC
V5259	Hearing Instrument, Digital, Binaural, ITC
V5260	Hearing Instrument, Digital, Binaural, ITE
V5261	Hearing Instrument, Digital, Binaural, BTE
V5262	Hearing Instrument, Disposable, Any Type, Monaural
V5263	Hearing Instrument, Disposable, Any Type, Binaural
V5264	Ear Mold (One (1) Ear Mold Per Year Per Ear and if Medically Necessary)
V5266	Hearing Instrument Battery (Limit of Four (4) Per Aid When Billed With A New Hearing Instrument Or A Replacement Aid)
V5267	Hearing Instrument Supplies, Accessories
V5299	Hearing Service Miscellaneous (May Be Used to Bill Warranty Replacement Hearing Instruments But Shall be Covered Only if Prior Authorized by the Department)

[3]

Section 3. Vision Program Services (1) Vision program coverage shall be limited to:

- (a) A prescription service;

(b) A repair service made to a frame;  
(c) A diagnostic service provided by:  
1. An ophthalmologist; or  
2. An optometrist to the extent the optometrist is licensed to perform the service.

(2) Eyeglass coverage shall:

(a) Be limited to a recipient who is under age twenty-one (21); and

(b) Not exceed:

1. \$200 per year for a recipient in the global choices benefit package; or  
2. \$400 per year for a recipient in the comprehensive choices, family choices, or optimum choices benefit package.

(3) To be covered:

(a) A service designated as a physical medicine and rehabilitation service CPT code shall require prior authorization if provided to a recipient age twenty-one (21) or over;

(b) A radiology service specified in 907 KAR 3:005, Physicians' services, Section 5, shall require prior authorization regardless of a recipient's age; [and]

(c) A service shall be provided in accordance with the Vision Program Manual; and

(d) A lens shall be polycarbonate and scratch coated.

Section 4. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563, Medicaid covered services hearings and appeals.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560, Medicaid hearings and appeals regarding eligibility.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671, Conditions of Medicaid provider participation; withholding overpayments, administrative appeal process, and sanctions.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Vision Program Manual, October 2007[2006] edition", Department for Medicaid Services; and

(b) "The Hearing Program Manual, October 2007[2006] edition", Department for Medicaid Services.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 20, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to hearing and vision services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws that require provision of hearing and vision services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the

limitations established in KRS 205.560(1) for the provision of medically necessary hearing and vision services to Medicaid recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to hearing coverage specifies covered audiology codes and procedures as well as covered hearing instrument codes and procedures and updates coverage to current industry practice. Via the amendment, services covered are not expanded, however, the department will cover procedures in audiologists' offices which previously were only covered in physicians' offices. Additionally, the amendment mandates that all lenses be polycarbonate and scratch coated; updates the Vision Program Manual by eliminating archaic policy and forms, renders optometric coverage equivalent to physician coverage where appropriate, and categorizes procedural codes.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify audiology and hearing instrument coverage and to alter coverage in order to ensure necessary care for recipients consistent with current industry practice. The amendment to vision coverage is necessary to reduce provider administrative burden and, thereby, encourage provider participation enhancing recipient access to care.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying audiology and hearing instrument coverage and altering coverage to ensure necessary care for recipients consistent with current industry practice. Additionally, the amendment reduces provider administrative burden and, thereby, encourages provider participation enhancing recipient access to care.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by clarifying audiology and hearing instrument coverage and altering coverage to ensure necessary care for recipients consistent with industry practice. Additionally, the amendment reduces provider administrative burden and, thereby, encourages provider participation enhancing recipient access to care.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect all hearing service providers and vision service providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities are not required to take any action to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? No cost is imposed on regulated entities as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Recipients should benefit as lenses must be polycarbonate (more impact resistant) and scratch coated and should see increased provider participation as a result of the reduction of provider administrative burden.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) projects the amendments to the administrative regulation to be budget neutral.

(b) On a continuing basis: DMS projects the amendments to the administrative regulation to be budget neutral.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering is not applied.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No local government entity is affected; however, the Department for Medicaid Services is affected.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. State laws authorizing this action include 194A.030(2), 194A.050(1), 205.520(3). Federal regulations authorizing this action include 42 C.F.R. 433.56, 42 C.F.R. 441.10, and 42 U.S.C. 1396d(a).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services projects the amendment to be budget neutral.

(d) How much will it cost to administer this program for subsequent years? The DMS projects the amendment to be budget neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

#### STATEMENT OF EMERGENCY 907 KAR 1:039E

This emergency administrative regulation is being promulgated to increase dispensing fees as follows: the hearing aid dispensing fee for the first hearing aid (one (1) ear) is increased from seventy-five (75) dollars to \$150 and for the second hearing aid (two (2) ears or binaural) from twenty-five (25) dollars to fifty (50) dollars. This action must be taken on an emergency basis to protect the health, safety, and welfare of recipients by ensuring an adequate pool of providers and, thus, adequate recipient access to necessary care. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor  
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Physicians and Specialty Services



(Emergency Amendment)

907 KAR 1:039E. Payments for hearing services.

RELATES TO: KRS 205.520, 334.010, 334.040, 334.200, 42 C.F.R. 447.200, 204

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 1998 Ky. Acts ch. 615, EO 2004-726]

EFFECTIVE: November 20, 2007

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the program of Medical Assistance. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the department[cabinet] for hearing services.

Section 1. Definitions (1) "Audiologist" is defined by KRS 334A.020(5).

(2) "Comparable aid" means an aid falling within the general classifications of fitting type, for example, body, behind-the-ear, in-the-ear, or eyeglasses.

(3) "Department" means the Department for Medicaid Services.

(4) "Hearing instrument" is defined by KRS 334.010(4).

(5) "Specialist in hearing instruments" is defined by KRS 334.010(9).

Section 2. Reimbursement to an Audiologist. (1) The department[cabinet] shall reimburse a participating audiologist at usual and customary actual billed charges up to the fixed upper limit per procedure established by the department[cabinet] at sixty-five (65) percent of the median billed charge using 1989 calendar year billed charges.

(2) If there is no median available for a procedure, or the department[cabinet] determines that available data relating to the median for a procedure is unreliable, the department[cabinet] shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service.

Section 3. Hearing Instrument Reimbursement. (1) If a manufacturer of a hearing instrument billed to the department submits a price schedule which includes the manufacturer's invoice price of the hearing instrument, the department shall reimburse the participating specialist in hearing instruments at the lesser of:

(a) The manufacturer's invoice price plus a professional fee of \$150 for the first (one (1) ear) hearing instrument and fifty (50) dollars for the second (two (2) ears or binaural) hearing instrument if two (2) hearing instruments are dispensed on the same date;

(b) The actual specialist in hearing instruments' cost plus a professional fee of \$150 for the first (one (1) ear) hearing instrument and fifty (50) dollars for the second (two (2) ears or binaural) hearing instrument when two (2) hearing instruments are dispensed on the same date; or

(c) The suggested retail price submitted by the manufacturer for the hearing instrument.

(2) If a manufacturer of a hearing instrument billed to the department has not submitted a price schedule which includes the manufacturer's invoice price for the hearing instrument, the department shall reimburse the participating specialist in hearing instruments at the lesser of:

(a) The lowest price submitted for a comparable hearing aid plus a professional fee of \$150 for the first (one (1) ear) hearing instrument and fifty (50) dollars for the second (two (2) ears or binaural) hearing instrument when two (2) hearing instruments are dispensed on the same date;

(b) The actual specialist in hearing instruments' cost plus a professional fee of \$150 for the first (one (1) ear) hearing instrument and fifty (50) dollars for the second (two (2) ears or binaural)

hearing instrument if two (2) hearing instruments are dispensed on the same date; or

(c) The lowest suggested retail price submitted for a comparable aid.

Section 3. Replacement Cord Reimbursement. The department shall reimburse for a replacement cord.

(1) At the specialist in hearing instruments' cost plus a professional fee set; and

(2) Not to exceed the fixed upper limit.

Section 4. Hearing Instrument Repair Reimbursement. The department shall reimburse a specialist in hearing instruments for a hearing instrument repair.

(1) On the basis of the manufacturer's charge for repair or replacement of parts;

(2) Plus the specialist in hearing instruments' cost for postage and insurance relative to the repair;

(3) Plus a professional fee; and

(4) Not to exceed the fixed upper limit.

Section 5. Appeals. A provider may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671. Provider enrollment, disclosure, and documentation for Medicaid participation. [(3) An audiologist shall be entitled to the same dispensing fee for a hearing aid as shown in Section 2 of this administrative regulation.

(4) Fixed upper limits not determined in accordance with the principle shown in this section of the administrative regulation due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.

Section 2. Hearing Aid Dealers.

(1) If the manufacturer of the hearing aid billed to the program has submitted a dealer price schedule which includes that hearing aid, the cabinet shall reimburse the participating hearing aid dealer at the lesser of:

(a) That dealer price in the price schedule plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date;

(b) The actual dealer cost plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date; or

(c) The suggested retail price submitted by the manufacturer for that aid.

(2) If the manufacturer of the hearing aid billed to the program has not submitted a dealer price schedule which includes that hearing aid, the cabinet shall reimburse the participating hearing aid dealer at the lesser of:

(a) The lowest dealer price submitted for a comparable hearing aid plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date;

(b) The actual dealer cost plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date; or

(c) The lowest suggested retail price submitted for a comparable aid. A comparable aid is defined as an aid falling within the general classifications of fitting type, i.e., body, behind-the-ear, in-the-ear, eyeglasses.

Section 3. Cords. The cabinet shall make payment for a replacement cord at the dealer's cost, plus a professional fee set at the fixed upper limit.

Section 4. Hearing Aid Repairs. The cabinet shall reimburse a hearing aid dealer for a hearing aid repair on the basis of the manufacturer's charge for repair or replacement of parts, plus the dealer's cost for postage and insurance relative to the repair, plus a professional fee set at the fixed upper limit.]

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 20, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-6204

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to hearing reimbursement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws that require provision of hearing services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the limitations established in KRS 205.560(1) for the provision of medically necessary hearing services to Medicaid recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation: The amendment increases dispensing fees as follows: the hearing aid dispensing fee is increased for the first hearing aid (one ear) from seventy-five (75) dollars to \$150 and for the second hearing aid (two ears or binaural) from twenty-five (25) dollars to fifty (50) dollars. Additionally, the amendment contains formatting and wording changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to increase provider reimbursement to encourage provider participation and in turn enhance recipient access to necessary care. Additionally, the amendment contains formatting and wording changes to comply with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by increasing provider reimbursement to encourage provider participation and in turn enhance recipient access to necessary care. Additionally, the amendment contains formatting and wording changes to comply with KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by increasing provider reimbursement to encourage provider participation and in turn enhance recipient access to necessary care. Additionally, the amendment contains formatting and wording changes to comply with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect all hearing aid providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities are not required to take any action to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed on regulated entities as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Providers will benefit from increased dispensing fees which in turn should encourage more provider participation and; thus, enhance recipient access to care.

Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) projects that the amendments to this administrative regulation will cost approximately \$12,800 (\$8,900 federal funds and \$3,900 state funds) annually.

(b) On a continuing basis: DMS projects that the amendments to this administrative regulation will cost approximately \$12,800 (\$8,900 federal funds and \$3,900 state funds) annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? This administrative regulation increases dispensing fees which are tiered due to the nature of the item being dispensed.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No local government entity is affected; however, the Department for Medicaid Services is affected

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. State laws authorization this action include 194A.030(2), 194A.050(1), 205.520(3). Federal regulations authorization this action include 42 C.F.R. 447.200 and 42 C.F.R. 447.204.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services projects that the amendments to this administrative regulation will cost approximately \$12,800 (\$8,900 federal funds and \$3,900 state funds) annually.

(d) How much will it cost to administer this program for subsequent years? DMS projects that the amendments to this administrative regulation will cost approximately \$12,800 (\$8,900 federal funds and \$3,900 state funds) annually.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

## STATEMENT OF EMERGENCY



907 KAR 1:054E

This emergency administrative regulation is being promulgated to expand federally-qualified health center (FQHC) and primary care center service coverage to include behavioral health services in response to a mandate from the Centers for Medicare and Medicaid Services (CMS). This action must be taken on an emergency basis to comply with a federal mandate. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor  
MARK BIRDWHISTELL, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Hospital and Provider Operations**  
**(Emergency Amendment)**

**907 KAR 1:054E. Primary care center and federally-qualified health center services.**

RELATES TO: KRS 205.520, 310.005, 314.011, 335.100, 42 C.F.R. 400.203, 405.2401, 2412-2416, 2446, 2448, 2450, 2452, 441 Subpart E and F, 447.53, 42 U.S.C. 1395x(aa), 42 U.S.C. 1396d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3) [EO-2004-726]

EFFECTIVE: November 20, 2007

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004 reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program [of Medical Assistance in accordance with Title XIX of the Social Security Act]. KRS 205.520(3) authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. [Primary care centers (as defined by the Health Certificate of Need and Licensure Board) and federally-qualified health centers represent an opportunity for the provision of comprehensive medical services to the indigent citizenry of Kentucky.] This administrative regulation establishes [therefore, sets forth] the provisions relating to primary care center and federally-qualified health center services for which payment shall be made by the Medicaid Program on [Medical Assistance Program in] behalf of both the categorically needy and medically needy.

Section 1. (1) "Advanced registered nurse practitioner" is defined by KRS 314.011(7).

(2) "Clinical pharmacist" means a licensed pharmacist whose scope of service includes taking medication histories, monitoring drug use, contributing to drug therapy, drug selection, patient counseling, administering drug programs, or surveillance for adverse reactions and drug interactions.

(3) "Clinical psychologist" means a doctorate level psychologist who is licensed in accordance with KRS 319.050.

(4) "Department" means the Department for Medicaid Services or its designee.

(5) "Emergency condition" means a condition or situation requiring an emergency service pursuant to 42 C.F.R. 447.53.

(6) "Federally-qualified health center" or "FQHC" is defined by 42 U.S.C. 1396d(l)(2)(B).

(7) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(8) "Nurse midwife" is defined by 42 C.F.R. 405.2401(b).

(9) "Nutritionist" is defined by KRS 310.005(4).

(10) "Physician" is defined by 42 C.F.R. 405.2401(b).

(11) "Physician assistant" is defined by 42 C.F.R. 405.2401(b).

(12) "Primary care center" or "PCC" means an entity meeting the primary care center requirements established in 902 KAR 20:058.

(13) "State plan" is defined by 42 C.F.R. 400.203.

**Section 2. Primary Care Center Covered Services** (1) The department shall cover, and a primary care center shall provide, the following services:

(a) Medical diagnostic or treatment services provided by a physician, advanced registered nurse practitioner, or a physician assistant if licensed under state authority;

(b) Treatment of injuries or minor trauma;

(c) Prenatal or postnatal care;

(d) Preventive health services including well-baby care, well-child care, immunization, or other preventive care;

(e) Referral services designed to ensure the referral to and acceptance by an appropriate medical resource when services necessary to the health of the patient are not provided directly by the center; and

(f) Health education, including distribution of written material, provided by appropriate personnel to local school systems, civic organizations, or other concerned local groups.

(2) The department shall cover the following services and a primary care center shall provide at least two (2) of the following services:

(a) Dental services;

(b) Optometric services;

(c) Family planning services;

1. Listed in 907 KAR 1:048, Family planning services, Section 1; and

2. As limited in 907 KAR 1:048, Family planning services, Section 2.

(d) Home health services listed and as limited in 907 KAR 1:030, Home health agency services;

(e) Social services counseling;

(f) Pharmacy services which shall meet the coverage criteria established in 907 KAR 1:019, Outpatient Pharmacy Program;

(g) Nutritional services provided by a nutritionist, including individual counseling relating to nutritional problems or nutritional education or group nutritional services; or

(h) Nurse midwifery services which shall be provided:

1. As a program including prenatal services to expectant mothers, delivery or postnatal services; and

2. By a nurse midwife.

(3) The department shall cover, and a primary care center may, but is not required to provide, the following services:

(a) Excluding institutional care, other state plan services;

(b) Holding or observation accommodations;

(c) Outreach services provided as a package structured to identify health care needs in the service area;

(d) Clinical pharmacist services;

(e) Behavioral health services provided by a clinical psychologist, licensed clinical social worker, or advanced registered nurse practitioner within the provider's legally authorized scope of service;

(f) Services or supplies furnished as an incident to services provided by a physician, physician assistant, advanced registered nurse practitioner, or nurse midwife if the service or supply meets the criteria established in 42 C.F.R. 405.2413 or 42 C.F.R. 405.2415; or

(g) Services or supplies incident to a clinical psychologist's or licensed clinical social worker's behavioral health services if the service or supply meets the criteria established in 42 C.F.R.

**Section 3. Federally-qualified Health Center Covered Services.** A federally-qualified health center shall provide:

(1) Federally-qualified health center services pursuant to 42 U.S.C. 1395x(aa)(3);

(2) Federally-qualified health center services pursuant to 42 U.S.C. 1396d(l)(2)(A);

(3) Other Medicaid-covered ambulatory outpatient services established in the state plan; or

(4) Any combination of the services described in subsections (1), (2), and (3) of this section.

Section 4. Drugs for Specified Immunizations. The Cabinet for Health and Family Services shall provide free, upon request, drugs necessary for the following immunizations:

- (1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);
- (2) Measles, mumps, and rubella virus vaccine live (MMR);
- (3) Poliovirus vaccine, live, oral, any type (OPV); or
- (4) Hemophilus B conjugate vaccine (HBCV).

Section 5. Coverage Limits. (1)(a) Pharmacy service coverage, except as established in subsection (2) of this section, shall be limited to drugs covered pursuant to 907 KAR 1:019, Outpatient pharmacy program.

(b) A drug or biological not covered through the department's pharmacy program shall be covered if necessary for treatment of an emergency condition.

(2) Laboratory service coverage shall be limited to:

(a) Services provided directly by a PCC or FQHC; or

(b) If purchased, other laboratory services covered pursuant to 907 KAR 1:028, Other laboratory and x-ray services.

(3) Dental service coverage shall be limited to dental service coverage pursuant to 907 KAR 1:026, Dental services.

(4) Vision service coverage shall be limited to vision service coverage pursuant to 907 KAR 1:038, Hearing and Vision Program services.

(5) Audiology service coverage shall be limited to hearing service coverage pursuant to 907 KAR 1:038, Hearing and vision program services.

(6) An abortion or sterilization service shall be allowed in accordance with 42 C.F.R. 441, Subpart E or Subpart F, and covered within the scope and limitations of federal law, federal regulations, and state law.

(7) Durable medical good and prosthetic coverage shall be limited to durable medical good or prosthetic coverage pursuant to 907 KAR 1:479, Durable medical equipment covered benefits and reimbursement or 907 KAR 1:030, Home health agency services and reimbursement.

(8) A holding or observation accommodation shall be covered:

(a) For no more than twenty-four (24) hours; and

(b) If:

1. The recipient's medical record:

a. Documents the appropriateness of the holding or observation accommodation; and

b. Contains a statement of conditions observed and treatment rendered during the holding time;

2. A physician:

a. Determines that the holding or observation accommodation is necessary; and

b. Is on call at all times when a recipient is held beyond the regularly scheduled hours of the center; and

3. A licensed nurse is on duty during the time the recipient patient remains beyond regularly-scheduled hours.

(9) A radiology procedure shall be covered if provided by a licensed practitioner of the healing arts or by an individual holding a valid certificate to operate sources of radiation.

Section 6. Noncovered Services. The following services shall not be covered as PCC or FQHC services:

(1) Services provided in a hospital as defined in 42 U.S.C. 1395x(e); or

(2) Institutional services;

(3) Housekeeping, babysitting, or other similar homemaker services; or

(4) Services which are not provided in accordance with restrictions imposed by law or administrative regulation. [As used in this administrative regulation, the following definitions apply: (1) Basic services—These services which shall be provided by the primary care center for it to be considered a primary care center by the cabinet;

(2) Supplemental services. These specified services which are in addition to the basic or required range of services, and for which the cabinet shall make payment when appropriately provided by the primary care center;

(3) Element. A specific subprogram within the Medical Assistance Program;

for example, dental services is a subprogram or element of the Medical Assistance Program;

(4) Requirements for program participation. These requirements of law or administrative regulation generally applicable throughout the Medical Assistance Program and with which all medical services providers shall comply in order to participate and receive reimbursement as a provider of services to eligible medical assistance recipients.]

Section 2.—Requirement for Participation. Each primary care center shall be required to meet the standards set for certification by the Commission on Health Economics Control in Kentucky, and shall not receive reimbursement for services as a primary care center provider until the cabinet determines that the standards are met and that the provider complies with all requirements for program participation. Each federally required health center shall be required to meet appropriate licensure standards (whether as a primary care center or other health facility) and shall in addition be receiving a grant under section 329, 330, or 340 of the United States Public Health Service Act or be determined by the Secretary, United States Department of Health and Human Services to meet the requirements for receiving a grant under section 329, 330, or 340 of the United States Public Health Service Act.

Section 3.—Covered Services. Each primary care center shall provide directly to eligible program recipients on a regular, full-time basis the basic services as specified in subsection (1) of this section, and may provide one or more of the supplemental services. Each federally qualified health center shall be entitled to provide the services described in the Social Security Act at Section 1861(aa)(1) and any other ambulatory services offered on an outpatient basis which are included in the Medicaid state plan.

(1) Basic services which shall be provided by primary care centers:

(a) Medical diagnostic and treatment services for all age groups, as provided by a physician(s), nurse practitioner(s), or physician assistant(s) if licensed under state authority;

(b) Treatment of injuries and minor trauma;

(c) Prenatal and postnatal care;

(d) A program of preventive health services which shall include well baby care, well child care, and immunization, and which may include other types of preventive care;

(e) Referral services designed to ensure the referral to and acceptance by an appropriate medical resource when services necessary to the health of the patient are not provided directly by the center;

(f) Health education services. These services shall provide as a minimum appropriate personnel to present, on request, information on general health care to local school systems, civic organizations and other concerned local groups. Services are to include distribution of written material on pertinent health subjects.

(g) The primary care center shall provide directly at least two (2) of the following additional professional services:

1. Dentist;

2. Optometrist;

3. Family planning services. These services shall be provided as a package which shall include those services required under the family planning element of the Medical Assistance Program;

4. Home health services. These services shall include the same services as provided under the home health element of the Medical Assistance Program;

5. Social services counseling. This shall include, as a minimum, information and referral services. Intensive counseling is to be limited to crisis situations and health-related problems. Individuals with other identified counseling needs are to be referred to appropriate social service agencies. These services shall be performed by a licensed, graduate, or certified social worker;

6. Pharmacy services. These services shall meet the standards of the pharmacy component of the Medical Assistance Program;

7. Nutritional services. These services shall include as a minimum individual counseling relating to nutritional problems or nutritional education. Group nutritional services may also be provided. These services shall be performed by a professional nutritionist, and

8. Nurse midwifery services. These services shall be provided

as a program which is to include prenatal services to expectant mothers, as well as delivery and postnatal services. These services shall be performed by a certified nurse midwife.

(2) Supplemental services which may be provided by primary care centers:

(a) Other services (excluding institutional care) within the scope of the Medical Assistance Program;

(b) Holding/observation accommodations;

(c) Any of the types of service in subsection (1)(g) of this section, which are not provided as basic services;

(d) Outreach services. These services shall be provided as a package structured to identify health care needs in the service area; and

(e) Clinical pharmacist. A clinical pharmacist is a licensed pharmacist whose services include taking medication histories, monitoring drug use, contributing to drug therapy, drug selection, patient counseling, administering drug programs, and surveillance for adverse reactions and drug interactions.

Section 4. ~~Drugs for Specified Immunizations.~~ Effective with regard to services provided on or after October 1, 1988, primary care centers and, effective April 1, 1990, federally qualified health centers, will be allowed to secure drugs for specified immunizations from the Department for Health Services free to provide immunizations for Medicaid recipients. The specified immunizations are:

(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine, live (MMR);

(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and

(4) Hemophilus B conjugate vaccine (HBCV).

Section 5. ~~Limitations on Services.~~ The following limitations are applicable to specified services: (1) Pharmacy services are limited to those drugs covered through the pharmacy services element of the Medical Assistance Program;

(2) Other drugs and biologicals not covered under pharmacy services are limited to those necessary for the treatment of emergency cases;

(3) Laboratory services are limited to those procedures provided directly by the center, or if purchased, these services are limited to those covered under the independent laboratory element of the Medical Assistance Program;

(4) Dental services are limited to those procedures covered through the dental services element of the Medical Assistance Program;

(5) Vision care services are limited to those services covered through the vision care services element of the Medical Assistance Program;

(6) Audiology services are limited to those services covered through the hearing services element of the Medical Assistance Program;

(7) Abortion and sterilization services shall be performed in accordance with guidelines specified by the cabinet;

(8) Durable medical goods and prosthetics are limited to those covered under the durable medical equipment or home health element of the Medical Assistance Program;

(9) Mental health services are limited to emergency services and appropriate referral;

(10) Holding/observation accommodations are covered for not more than twenty-four (24) hours when provided in accordance with the following:

(a) The patient's record shall document the appropriateness of such utilization;

(b) The physician shall make the decision that such utilization is necessary;

(c) A licensed nurse shall be on duty at the center during the time a patient is held in center accommodations beyond regular scheduled hours;

(d) A licensed physician shall be on call at all times when a patient is held beyond the regular scheduled hours of the center;

(e) A statement of conditions observed and treatment rendered during the holding time shall be entered in the patient's medical record;

(11) Radiology procedures shall be performed by either a licensed practitioner of the healing arts or an individual holding a valid certificate to operate sources of radiation.

Section 6. ~~Noncovered Services.~~ The following services are specifically excluded from coverage as primary care center or federally qualified health center services:

(1) All institutional services;

(2) Housekeeping, babysitting, and other homemaker services of like nature;

(3) Services which are not provided in accordance with restrictions imposed by law or administrative regulation.

Section 7. ~~The provisions of this administrative regulation as amended shall be effective with regard to services provided on or after April 1, 1990.]~~

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY November 15, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-6204

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes primary care center (PCC) and federally qualified health center (FQHC) coverage provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes PCC and FQHC coverage provisions as permitted by state and federal authority.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation. This amendment expands, as mandated by the Centers for Medicare and Medicaid Services (CMS), the federally-qualified health center coverage scope to include behavioral health services. Additionally, the Department for Medicaid Services (DMS) is likewise expanding, at its own choosing, the PCC coverage scope to include behavioral health care. Lastly, the amendment includes formatting and drafting changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with a federal mandate.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with a federal mandate to ensure receipt of federal matching funds for federally-qualified health center services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by complying with a federal mandate to ensure receipt of federal matching funds for federally-qualified health center services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All federally-qualified health centers and primary care centers are affected by the amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Rather than restrict coverage, the

amendments favor providers, expanding the scope of coverage to include behavioral health services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated, the amendments expand, rather than restrict, the scope of coverage.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments expand coverage which will enhance recipient access to behavioral health services as well as broaden provider's scope of care.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates the enhanced coverage may increase but the extent of cost is unknown and depends upon utilization and PCC and FQHC practice patterns. DMS is not implementing limits at this time; however, if utilization increases significantly, it intends to explore adopting safeguards or other measures to ensure that utilization is appropriate and not excessive.

(b) On a continuing basis: DMS anticipates the enhanced coverage may increase but the extent of cost is unknown and depends upon utilization and PCC and FQHC practice patterns. DMS is not implementing limits at this time; however, if utilization increases significantly, it intends to explore adopting safeguards or other measures to ensure that utilization is appropriate and not excessive.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation as the current budget is adequate to accommodate the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? DMS did not apply tiering in this administrative regulation but rather chose to expand the scope of coverage for primary care centers identical to the scope expansion for federally-qualified health care centers though on the FQHC expansion is federally-mandated.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate, 42 USC 1395x(aa) and as reinforced via Centers for Medicare and Medicaid Services (CMS) "BPHC Program Information Notice 2004-05 from CMS Director Dennis Smith.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. State Medicaid programs are mandated to cover FQHC behavioral health services furnished by clinical psychologists, clinical social workers and nurse practitioners, within their authorized scope of practice, to individuals who are categorically needy or medically needy (if the state Medicaid program has elected to cover federally-qualified health center services to individuals who are medically needy).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect all federally-qualified health centers and primary care centers.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by 42 USC 1395x(aa).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment could generate additional revenue for local government as some local health departments are primary care centers. The amount of additional revenue depends on behavioral health utilization and is not determinable at this time

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment could generate additional revenue for local government as some local health departments are primary care centers. The amount of additional revenue depends on behavioral health utilization and is not determinable at this time.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates the enhanced coverage may increase but the extent of cost is unknown and depends upon utilization and PCC and FQHC practice patterns. DMS is not implementing limits at this time; however, if utilization increases significantly, it intends to explore adopting safeguards or other measures to ensure that utilization is appropriate and not excessive.

(d) How much will it cost to administer this program for subsequent years? The Department for Medicaid Services (DMS) anticipates the enhanced coverage may increase but the extent of cost is unknown and depends upon utilization and PCC and FQHC practice patterns. DMS is not implementing limits at this time; however, if utilization increases significantly, it intends to explore adopting safeguards or other measures to ensure that utilization is appropriate and not excessive.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

#### STATEMENT OF EMERGENCY 907 KAR 1:082E

This emergency administrative regulation is being promulgated to expand rural health clinic (RHC) service coverage to include behavioral health services in response to a mandate from the Centers for Medicare and Medicaid Services (CMS). This action must be taken on an emergency basis to comply with a federal mandate. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor  
MARK BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Hospital and Provider Operations

(Emergency Amendment)

907 KAR 1:082E. Rural health clinic services.

RELATES TO: KRS 205.520, 314.011, 319.050, 335.100, 42 C.F.R. 400.203, 42 C.F.R. 405.2401(b), 405.2412-405.2417, 405.2450, 405.2452, 405.2468, 440.20, 42 C.F.R. 491.1-491.11, 42 U.S.C. 1395x(aa) and (hh)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), EO-2004-726

EFFECTIVE DATE: November 20, 2007

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program [of Medical Assistance in accordance with Title XIX of the Social Security Act]. KRS Chapter 205.520(3) authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the provisions relating to coverage of rural health clinic services for which payment shall be made by the Medicaid [Medical Assistance] Program on behalf of both categorically needy and medically needy.

Section 1. Definitions. (1) "Advanced registered nurse practitioner" is defined by KRS Chapter 314.011(7).

(2) "Clinical psychologist" means a doctorate level psychologist who is licensed in accordance with KRS 319.050.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Homebound recipient" is defined by 42 C.F.R. 440.20(b)(4)(iv).

(5) "Intermittent nursing care" is defined by 42 C.F.R. 405.2401(b).

(6) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(7) "Medically necessary" means that a covered benefit or service is necessary in accordance with the provisions of 907 KAR 3:130. Medical necessity and clinically appropriate determination basis, Section 2.

(8) "Nurse-midwife" is defined by 42 C.F.R. 405.2401(b).

(9) "Part-time nursing care" is defined by 42 C.F.R. 405.2401(b).

(10) "Physician" is defined by 42 C.F.R. 405.2401(b).

(11) "Physician assistant" is defined by 42 C.F.R. 405.2401(b).

(12) "Other ambulatory services" is defined by 42 C.F.R. 440.20(c).

(13) "Rural health clinic" or "RHC" is defined by 42 C.F.R. 405.2401(b).

(14) "State plan" is defined by 42 C.F.R. 400.203.

(15) "Visiting nurse services" is defined by 42 C.F.R. 405.2401(b).

Section 2. Covered Services. The department shall cover the following medically necessary rural health clinic services furnished by an RHC that has been certified in accordance with 42 C.F.R. 491.1 through 491.11:

(1) Services pursuant to 42 U.S.C. 1395x(aa);

(2) Services provided by a physician if the physician:

(a) Complies with the physician responsibility requirements established by 42 C.F.R. 491.8(b); and

(b) 1. Performs the services in an RHC; or

2. Is compensated under an agreement with an RHC for providing services furnished to a Medicaid eligible RHC patient in a location other than the RHC;

(3) Services provided by a physician assistant, advanced registered nurse practitioner, or nurse midwife who is employed by or receives compensation from the RHC if the services:

(a) Are furnished by a member of the RHC's staff who complies

with the responsibility requirements established by 42 C.F.R. 491.8(c);

(b) Are furnished under the medical supervision of a physician;

(c) Are furnished in accordance with a medical order for the care and treatment of a patient as prepared by a physician;

(d) Are within the provider's legally-authorized scope of practice; and

(e) Would be covered if furnished by a physician;

(4) Services or supplies furnished as an incident to services provided by a physician, physician assistant, advanced registered nurse practitioner, or nurse midwife if the service or supply meets the criteria established in 42 C.F.R. 405.2413 or 42 C.F.R. 405.2415;

(5) Part-time or intermittent visiting nurse care and related supplies, except for drugs or biologicals, if:

(a) The RHC is located in an area where a determination has been made that there is a shortage of home health agencies pursuant to 42 C.F.R. 405.2417;

(b) The services are provided by a registered nurse, licensed practical nurse, or a licensed vocational nurse who is employed by or compensated for the services by the RHC; and

(c) The services are furnished to a homebound recipient under a written plan of treatment that is:

1. Established and reviewed at least every sixty (60) days by a supervising physician of the RHC; or

2. Established by a physician, physician assistant, advanced registered nurse practitioner, or nurse midwife and reviewed and approved at least every sixty (60) days by a supervising physician of the RHC;

(6) Behavioral health services provided by a clinical psychologist, licensed clinical social worker, or advanced registered nurse practitioner if the services are:

(a) Provided by an individual who is employed by or furnishes services under contract to the RHC; and

(b) Are within the provider's legally-authorized scope of practice;

(7) Services or supplies incident to a clinical psychologist's or licensed clinical social worker's behavioral health services if the service or supply meets the criteria established in 42 C.F.R. 405.2452; and

(8) Other ambulatory services as established in the state plan.

Section 3. Provision of Services. An RHC shall comply with the service provision requirements established by 42 C.F.R. 491.9.

Section 4. Immunizations. An RHC may provide, upon request from a recipient, the following covered immunizations:

(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine live (MMR);

(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and

(4) Hemophilus B conjugate vaccine (HBCV). [Conditions of Participation. Each rural health clinic wishing to participate as a rural health clinic in the Medical Assistance Program must be certified as a rural health clinic provider pursuant to Title XVIII of the Social Security Act in accordance with conditions set forth at 42 C.F.R. Part 481-

Section 2. Conditions of Coverage. Each participating rural health clinic may provide for eligible medical assistance recipients the same services it may provide to Medicare recipients, i.e., physicians' services, nurse practitioners' services, and, where permitted under state law, physicians' assistants' services. In addition, rural health clinics may provide any other ambulatory service covered under the Medical Assistance Program so long as the rural health clinic meets the conditions for participation for that service element and provides the services in accordance with the applicable state administrative regulation covering that service, except, however, the rural health clinic need not be certified or licensed as the other type of provider (except to the extent provided for and/or required by law), nor have a separate participation agreement with the Medical Assistance Program for the provision of that type of service.

Section 3. Immunizations. Effective with regard to services

provided on or after October 1, 1988, rural health clinics will be allowed to secure drugs for specified immunizations from the Department for Public Health free to provide immunizations for Medicaid recipients. The specified immunizations are:

- (1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);
- (2) Measles, mumps, and rubella virus vaccine, live (MMR);
- (3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and
- (4) Hemophilus B conjugate vaccine (HBCV).]

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 15, 2007

FILED WITH AGENCY: November 20, 2007 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564 7905, fax (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-6204 or Barry Ingram (502) 564-5969

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rural health clinic (RHC) coverage provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes RHC coverage provisions as permitted by state and federal authority.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment expands, as mandated by the Centers for Medicare and Medicaid Services (CMS), the rural health clinic coverage scope to include behavioral health services. Additionally, the amendment includes formatting and drafting changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with a federal mandate

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with a federal mandate to ensure receipt of federal matching funds for RHC services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by complying with a federal mandate to ensure receipt of federal matching funds for RHC services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All RHCs enrolled as participating providers in the Medicaid program are affected by the amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Rather than restrict coverage, the amendments favor providers, expanding the scope of coverage to include behavioral health services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3). No cost is anticipated, the amendments expand, rather than restrict, the scope of coverage.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The amendments expand coverage which will enhance recipient access to behavioral health services as well as broaden provider's scope of care.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates the enhanced coverage may increase costs but the extent of cost is unknown and depends upon utilization and RHC practice patterns. DMS is not implementing limits at this time; however, if utilization increases significantly, it intends to explore adopting safeguards or other measures to ensure that utilization is appropriate and not excessive.

(b) On a continuing basis: DMS anticipates the enhanced coverage may increase costs but the extent of cost is unknown and depends upon utilization and RHC practice patterns. DMS is not implementing limits at this time; however, if utilization increases significantly, it intends to explore adopting safeguards or other measures to ensure that utilization is appropriate and not excessive.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will be necessary to implement this administrative regulation as the existing budget can accommodate the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? DMS did not apply tiering in this administrative regulation as the federal mandate applies to all RHCs.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 1395x(aa) and as reinforced via Centers for Medicare and Medicaid Services (CMS) "BPHC Program Information Notice 2004-05 from CMS Director Dennis Smith.

2. State compliance standards. KRS Chapter 205 520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. State Medicaid Programs are mandated to cover behavioral health services furnished by RHC clinical psychologists, clinical social workers and nurse practitioners, within their authorized scope of practice, to individuals who are categorically needy or medically needy (if the state Medicaid Program has elected to cover rural health clinic services to individuals who are medically needy).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)?

2. What units, parts or divisions of state or local government



(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect all rural health clinics enrolled in the Medicaid Program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by 42 C.F.R. 405.2450 and 42 C.F.R. 405.2468.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? DMS anticipates that the enhanced coverage may increase costs; however, the measures are necessary to enhance recipient access to mental health services.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that the enhanced coverage may increase costs; however, the measures are necessary to enhance recipient access to mental health services.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-)

Other Explanation: The fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. The Department for Medicaid Services (DMS) anticipates the enhanced coverage may cost money; however, the measures are necessary to enhance recipient access to care.

#### STATEMENT OF EMERGENCY 907 KAR 1:160E

This emergency administrative regulation is being promulgated to add goods and services to the consumer-directed option consistent with KRS 205.5606 and with a waiver approved by the Centers for Medicare and Medicaid Services (CMS). This action must be taken on an emergency basis to comply with KRS 205.5606. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor  
MARK D. BIRDWHISTELL, Secretary

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Long Term Care and Community Alternatives (Emergency Amendment)

907 KAR 1:160E. Home and community based waiver services.

RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5607, 205.635, 42 C.F.R. 440.180

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 42 C.F.R. 440.180, 42 U.S.C. 1396a, b, d, n

EFFECTIVE: December 5, 2007

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet

for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community based services waiver. This administrative regulation establishes the provisions for home and community based waiver services, including a consumer directed services option pursuant to KRS 205.5606.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066, Operation and services: adult day health care programs.

(3) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of an HCB recipient who does not require twenty-four (24) hour care in an institutional setting.

(4) "Advanced registered nurse practitioner" or "ARNP" means a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042.

(5) "Assessment team" means a team which:

(a) Conducts assessment or reassessment services; and

(b) Consists of:

1. Two (2) registered nurses; or

2. One (1) registered nurse and one (1) of the following:

a. A social worker;

b. A certified psychologist with autonomous functioning;

c. A licensed psychological practitioner;

d. A licensed marriage and family therapist; or

e. A licensed professional clinical counselor.

(6) "Blended services" means a nonmultiplicative combination of HCB waiver services identified in Section 5 of this administrative regulation and CDO services identified in Section 6 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(7) "Budget allowance" is defined by KRS 205.5605(1).

(8) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS Chapter 319.

(9) "Communicable disease" means a disease that is transmitted:

(a) Through direct contact with an infected individual,

(b) Indirectly through an organism that carries disease-causing microorganisms from one (1) host to another or a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another; or

(c) Indirectly by a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another.

(10) "Consumer" is defined by KRS 205.5605(2).

(11) "Consumer-directed option" or "CDO" means an option established by KRS 205.5606 within the home- and community-based services waiver that allows recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(12) "Covered services and supports" is defined by KRS 205.5605(3).

(13) "DCBS" means the Department for Community Based Services.

(14) "Department" means the Department for Medicaid Services or its designee.

(15) "Electronic signature" is defined by KRS 369.102(8).

(16) "HCB recipient" means an individual who:

(a) Is a recipient as defined by KRS 205.8451(9);

(b) Meets the NF level of care criteria established in 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services; and

(c) Meets the eligibility criteria for HCB waiver services established in Section 4 of this administrative regulation.

(17) "Home and community based waiver services" or "HCB waiver services" means home and community based waiver services for individuals who meet the requirements of Section 4 of this administrative regulation.

(18) "Home and community support services" means nonresidential and nonmedical home and community based services and supports that:

- (a) Meet the consumer's needs; and
- (b) Constitute a cost-effective use of funds.

(19) "Home health agency" means an agency that is:

- (a) Licensed in accordance with 902 KAR 20.081, Operation and services; home health agencies; and
  - (b) Medicare and Medicaid certified.
- (20) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(21) "Licensed practical nurse" or "LPN" means a person who:

- (a) Meets the definition of KRS 314.011(9); and
- (b) Works under the supervision of a registered nurse.

(22) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3)

(23) "NF" means nursing facility.

(24) "NF level of care" means a high intensity or low intensity patient status determination made by the department in accordance with 907 KAR 1:022, Nursing facility services intermediate care facility for individuals with mental retardation or a developmental disability services.

(25) "Normal baby sitting" means general care provided to a child which includes custody, control, and supervision.

(26) "Occupational therapist" is defined by KRS 319A.010(3).

(27) "Occupational therapist assistant" is defined by KRS 319A.010(4).

(28) "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.

(29) "Physical therapist" is defined by KRS 327.010(2).

(30) "Physical therapist assistant" means a skilled health care worker who:

- (a) Is certified by the Kentucky Board of Physical Therapy; and
- (b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(31) "Physician assistant" or "PA" is defined by KRS 311.840(3).

(32) "Plan of care" or "POC" means a written individualized plan developed by an HCB recipient or an HCB recipient's legal representative, case manager, or other individual designated by the HCB recipient.

(33) "Plan of treatment" means a care plan used by an ADHC center.

(34) "Registered nurse" or "RN" means a person who:

- (a) Meets the definition established in KRS 314.011(5); and
- (b) Has one (1) year or more experience as a professional nurse.

(35) "Representative" is defined by KRS 205.5605(6).

(36) "Sex crime" is defined by KRS 17.165(1).

(37) "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.

(38) "Speech-language pathologist" is defined by KRS 334A.020(3).

(39) "Support broker" means an individual chosen by a consumer from an agency designated by the department to:

- (a) Provide training, technical assistance, and support to a consumer; and
- (b) Assist a consumer in any other aspects of CDO.

(40) "Support spending plan" means a plan for a consumer that identifies the:

- (a) CDO services requested;
  - (b) Employee name;
  - (c) Hourly wage;
  - (d) Hours per month;
  - (e) Monthly pay;
  - (f) Taxes; and
  - (g) Budget allowance.
- (41) "Violent crime" is defined by KRS 17:165(3).

Section 2. Provider Participation. (1) In order to provide HCB waiver services, excluding consumer directed option services, a provider shall be a home health agency or ADHC center that provides services:

- (a) Directly; or
- (b) Indirectly through a subcontractor.

(2) An out-of-state provider shall comply with the requirements of this administrative regulation.

(3) A provider shall:

- (a) Comply with the following administrative regulations and program requirements:

1. 902 KAR 20:081, Operations and services; home health agencies;

2. 907 KAR 1:671, Conditions of Medicaid provider participation; withholding overpayments, administrative appeal process, and sanctions;

3. 907 KAR 1:672, Provider enrollment, disclosure, and documentation for Medicaid participation;

4. 907 KAR 1.673, Claims processing;

5. The Department for Medicaid Services Home and Community Based Waiver Services Manual; and

6. The Department for Medicaid Services Adult Day Health Care Services Manual;

(b) Not enroll an HCB recipient for whom the provider cannot provide HCB waiver services;

(c) Be permitted to accept or not accept an HCB recipient;

(d) Implement a procedure to ensure that the following is reported:

1. Abuse, neglect, or exploitation of an HCB recipient in accordance with KRS Chapters 209 or 620;

2. A slip or fall;

3. A transportation incident;

4. Improper administration of medication;

5. A medical complication; or

6. An incident caused by the recipient, including:

- a. Verbal or physical abuse of staff or other recipients;
- b. Destruction or damage of property; or
- c. Recipient self-abuse;

(e) Ensure a copy of each incident reported in accordance with paragraph (d) of this subsection is maintained in a central file subject to review by the department;

(f) Implement a process for communicating the incident, the outcome, and the prevention plan to:

1. An HCB recipient, family member, or his responsible party; and

2. The attending physician, PA, or ARNP;

(g) Maintain documentation of any communication provided in accordance with subsection (f) of this section. The documentation shall be:

1. Recorded in the HCB recipient's case record; and

2. Signed and dated by the staff member making the entry;

(h) Implement a procedure that ensures the reporting of a recipient or any interested party's [a] complaint against the provider or its personnel;

(i) Ensure that a copy of each complaint reported is maintained in a central file subject to review by the department.

(j) Implement a process for communicating a complaint, the resulting outcome, and related prevention plan to:

1. The HCB recipient, family member, or the HCB recipient's responsible party; and

2. The attending physician, PA, or ARNP if appropriate;

(k) Maintain documentation of any communication provided in accordance with subsection (j) of this section. The documentation shall be:

1. Recorded in the HCB recipient's case record; and

2. Signed and dated by the staff member making the entry;

(l) [to the department;

(m) Inform a recipient or any interested party in writing of the provider's:

1. Hours of operation; and

2. Policies and procedures;

(n) [Not permit a staff member who has contracted a communicable disease to provide a service to an HCB recipient until the condition is determined to no longer be contagious; and



(n)(k) Ensure that a staff member who provides direct services:

1. Demonstrates the ability to:
  - a. Read;
  - b. Write;
  - c. Understand and carry out instructions;
  - d. Keep simple records; and
  - e. Interact with an HCB recipient when providing an HCB waiver service;
2. Be trained by an HCB waiver provider;
3. Be supervised by an RN at least every other month.

Section 3. Maintenance of Records. (1) An HCB waiver provider shall maintain:

(a) A clinical record for each HCB recipient. The clinical record shall contain the following:

1. Pertinent medical, nursing, and social history;
2. A comprehensive assessment entered on form MAP-351 and signed by the
  - a. Assessment team; and
  - b. Department;
3. A completed MAP 109-HCBW;
4. A copy of the MAP-350 signed by the recipient or his legal representative at the time of application or reapplication and each recertification thereafter;

5. The name of the case manager;

6. Documentation of all level of care determinations;

7. All documentation related to prior authorizations, including requests, approvals, and denials;

8. Documentation of each contact with, or on behalf of, an HCB recipient;

9. [7.] Documentation that the HCB recipient receiving ADHC services was provided a copy of the ADHC center's posted hours of operation; and

10. Documentation that the recipient or legal representative was informed of the procedure for reporting complaints; and

11. [8.] Documentation of each service provided that shall include:

- a. The date the service was provided;
- b. The duration of the service;
- c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the HCB recipient's home;
- d. Itemization of each personal care or homemaking service delivered;
- e. The HCB recipient's arrival and departure time, excluding travel time, if the service was provided at the ADHC center;
- f. Progress notes which shall include documentation of changes, responses and treatments utilized to evaluate the HCB recipient's needs; and

g. The signature of the service provider; and

(b) Fiscal reports, service records, and incident reports regarding services provided. These reports shall be retained:

1. At least six (6) years from the date that a covered service is provided, or
2. For a minor three (3) years after the recipient reaches the age of majority under state law, whichever is longest.

(2) Upon request, an HCB provider shall make information regarding service and financial records available to the:

- (a) Department;
- (b) Cabinet for Health and Family Services, Office of Inspector General or its designee;
- (c) Department for Health and Human Services or its designee;
- (d) General Accounting Office or its designee;
- (e) Office of the Auditor of Public Accounts or its designee; or
- (f) Office of the Attorney General or its designee.

Section 4. HCB Recipient Eligibility Determinations and Redeterminations. (1) An HCB waiver service shall be provided to a Medicaid eligible HCB recipient who:

- (a) Is determined by the department to meet NF level of care requirements; and
- (b) Would, without waiver services, be admitted by a physician's order to an NF.

(2) The department shall perform an NF level of care determination for each HCB recipient at least once every twelve (12) months or more often if necessary.

(3) An HCB waiver service shall not be provided to an individual who:

(a) Does not require a service other than:

1. A minor home adaptation;
2. Case management, or
3. A minor home adaptation and case management;

(b) Is an inpatient of:

1. A hospital,
2. An NF; or
3. An intermediate care facility for an individual with mental retardation or a developmental disability;
- (c) Is a resident of a licensed personal care home; or
- (d) Is receiving services from another Medicaid home and community based services waiver program.

(4) An HCB waiver provider shall.

(a) Inform an HCB recipient or his legal representative of the choice to receive.

1. HCB waiver services; or
2. Institutional services; and

(b) Require an HCB recipient to sign a MAP-350 form at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive HCB waiver or institutional services.

(5) An eligible HCB recipient or the recipient's legal representative shall select a participating HCB waiver provider from which the recipient wishes to receive HCB waiver services.

(6) The department may exclude from the HCB waiver program an individual for whom the aggregate cost of HCB waiver services would reasonably be expected to exceed the cost of NF services.

(7) An HCB waiver provider shall use a MAP-24 to notify the local DCBS office and the department of an HCB recipient's:

- (a) Termination from the HCB waiver program; or
- (b) 1. Admission to an NF for less than sixty (60) consecutive days; and
2. Return to the HCB waiver program from an NF within sixty (60) consecutive days.

Section 5. Covered Services. (1) An HCB waiver service shall:

(a) Be prior authorized by the department to ensure that the service or modification of the service already meets the needs of the HCB recipient,

(b) Be provided pursuant to a plan of care or, for a CDO service, pursuant to a plan of care and support spending plan;

(c) Except for a CDO service, not be provided by a member of the HCB recipient's family. A CDO service may be provided by an HCB recipient's family member; and

(d) Shall be accessed within sixty (60) days of the date of prior authorization.

(2) To request prior authorization, a provider shall submit a completed MAP 10, MAP 109, and MAP 351 to the department.

(3) Covered HCB services shall include:

(a) A comprehensive assessment which shall:

1. Identify an HCB recipient's needs and the services that the HCB recipient or the recipient's family cannot manage or arrange for on the recipient's behalf;

2. Evaluate an HCB recipient's physical health, mental health, social supports, and environment;

3. Be requested by an individual seeking HCB waiver services or the individual's family, legal representative, physician, physician assistant, or ARNP;

4. Be conducted by an assessment team within seven (7) calendar days of receipt of the request for assessment; and

5. Include at least one (1) face-to-face home visit by a member of the assessment team with the HCB recipient and, if appropriate, the recipient's family;

(b) A reassessment service which shall.

1. Determine the continuing need for HCB waiver services and, if appropriate, CDO services;

2. Be performed at least every twelve (12) months;

3. Be conducted using the same procedures used in an assessment service;

4. Not be retroactive; and
5. Be initiated by an HCB waiver provider or support broker who shall:
  - a. Notify the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive; and
  - b. Not be reimbursed for a service provided during a period that an HCB recipient is not covered by a valid level of care certification;
- (c) A case management service which shall:
  1. Consist of coordinating the delivery of direct and indirect services to an HCB recipient;
  2. Be provided by a case manager who shall:
    - a. Be an RN, LPN, social worker, certified psychologist with autonomous functioning, licensed psychological practitioner, LMFT, or an LPCC;
    - b. Arrange for a service but not provide a service directly;
    - c. Contact the HCB recipient monthly by telephone or through a face-to-face visit at the HCB recipient's residence or in the ADHC center, with a minimum of one (1) face-to-face visit between the case manager and the recipient every other month; and
    - d. Assure that service delivery is in accordance with an HCB recipient's plan of care;
  3. Not include a group conference; and
  4. Include development of a plan of care that shall:
    - a. Be completed on the MAP 109;
    - b. Reflect the needs of the HCB recipient;
    - c. List goals, interventions, and outcomes;
    - d. Specify services needed;
    - e. Determine the amount, frequency, and duration of services;
    - f. Provide for reassessment at least every twelve (12) months;
    - g. Be developed and signed by the assessment team, case manager, and HCB recipient or his family; and
    - h. Be submitted to the department no later than thirty (30) calendar days after receiving the department's verbal approval of NF level of care;
- (d) A homemaker service which shall consist of general household activities and shall be provided:
  1. By staff pursuant to Section 2(3)(m) and (n)(i)-(k)] of this administrative regulation; and
  2. To an HCB recipient:
    - a. Who is functionally unable, but would normally perform age-appropriate homemaker tasks; and
    - b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaking activities;
- (e) A personal care service which shall consist of age-appropriate medically-oriented services and be provided:
  1. By staff pursuant to Section 2(3)(m) and (n)(i)-(k)] of this administrative regulation; and
  2. To an HCB recipient:
    - a. Who does not need highly skilled or technical care;
    - b. For whom services are essential to the recipient's health and welfare and not for the recipient's family; and
    - c. Who needs assistance with age-appropriate activities of daily living;
- (f) An attendant care service which shall consist of hands-on care that is:
  1. provided by staff pursuant to Section 2(3)(m) and (n)(i)-(k)] of this administrative regulation to an HCB recipient who:
    - a. Is medically stable but functionally dependent and requires care or supervision twenty-four (24) hours per day; and
    - b. Has a family member or other primary caretaker who is employed and not able to provide care during working hours;
  - [e. Prior to being eligible for the HCB Waiver Program in accordance with Section 4 of this administrative regulation, was able to care for him or herself;]
  2. Not of a general housekeeping nature; and
  3. Not provided to an HCB recipient who is receiving any of the following HCB waiver services:
    - a. Personal care;
    - b. Homemaker; or
    - c. ADHC;
- (g) A respite care service which shall be short term care based

- on the absence or need for relief of the primary caretaker and be:
1. Provided by staff pursuant to Section 2(3)(m) and (n)(i)-(k)] of this administrative regulation who provide services at a level that appropriately and safely meets the medical needs of the HCB recipient in the following settings:
    - a. An HCB recipient's place of residence; or
    - b. An ADHC center during posted hours of operation;
  2. Provided to an HCB recipient who has care needs beyond normal baby sitting; and
  3. Used no less than every six (6) months;
  4. Provided in accordance with 902 KAR 20.066, Operation and services: adult day health care programs, Section 2(1)(b)10a through c, if provided to a child under age twenty-one (21) in an ADHC center;
    - (h) A minor home adaptation service which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of an HCB recipient and which shall:
      1. Meet all applicable safety and local building codes;
      2. Relate strictly to the HCB recipient's disability and needs;
      3. Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the HCB recipient; and
      4. Be submitted on form MAP-95 for prior authorization; or
    - (i) An ADHC service which shall:
      1. Except for an HCB recipient approved for an ADHC service prior to May 1, 2003, be provided to an HCB recipient who is at least twenty-one (21) years of age;
      2. Include the following basic services and necessities provided to Medicaid waiver recipients during the posted hours of operation:
        - a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;
        - b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;
        - c. Snacks;
        - d. Supervision by an RN;
        - e. Age and diagnosis appropriate daily activities; and
        - f. Routine services that meet the daily personal and health care needs of an HCB recipient, including:
          - (i) Monitoring of vital signs;
          - (ii) Assistance with activities of daily living; and
          - (iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by an HCB recipient;
      3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center.
      4. Include ancillary services in accordance with 907 KAR 1:023, Review and approval of selected therapies as ancillary services in nursing facilities, if ordered by a physician, PA, or ARNP in an HCB recipient's ADHC plan of treatment. Ancillary services shall.
        - a. Consist of evaluations or reevaluations for the purpose of developing a plan which shall be carried out by the HCB recipient or ADHC center staff;
        - b. Be reasonable and necessary for the HCB recipient's condition;
        - c. Be rehabilitative in nature;
        - d. Include physical therapy provided by a physical therapist or physical therapist assistant, occupational therapy provided by an occupational therapist or occupational therapist assistant, or speech therapy provided by a speech-language pathologist; and
        - e. Comply with the physical, occupational, and speech therapy requirements established in Technical Criteria for Reviewing Ancillary Services for Adults;
      4. Include respite care services pursuant to paragraph (g) of this subsection;
      5. Be provided to an HCB recipient by the health team in an ADHC center which may include:
        - a. A physician;
        - b. A physician assistant;
        - c. An ARNP;

- d. An RN;
  - e. An LPN;
  - f. An activities director;
  - g. A physical therapist;
  - h. A physical therapist assistant;
  - i. An occupational therapist;
  - j. An occupational therapist assistant;
  - k. A speech pathologist;
  - l. A social worker;
  - m. A nutritionist;
  - n. A health aide;
  - o. An LPCC;
  - p. An LMFT;
  - q. A certified psychologist with autonomous functioning; or
  - r. A licensed psychological practitioner; and
- 7.[6.] Be provided pursuant to a plan of treatment. The plan of treatment shall:

(i) Be developed and signed by each member of the plan of treatment team which shall include the recipient or a legal representative of the recipient;

(ii) Include pertinent diagnoses, mental status, services required, frequency of visits to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permitted, nutritional requirements, medication, treatment, safety measures to protect against injury, instructions for timely discharge, and other pertinent information; and

(iii) Be developed annually from information on the MAP 351 [reviewed annually] and revised as needed; and

b. The plan of treatment team shall:

(i) Include the recipient or a legal representative of the recipient; and

(ii) Submit a current copy of the plan of treatment to the department annually or following any revision.

(4) Modification of an ancillary therapy service or an ADHC unit of service shall require prior authorization as follows:

(a) Prior authorization shall:

1. Be requested by an RN or designated ADHC center staff; and

2. Require submission of a revised MAP 109 and an order signed by a physician, physician assistant, or ARNP;

(b) An RN or designated ADHC center staff shall forward a copy of the documents required in paragraph (a) of this subsection to the HCB case manager or the consumer's support broker for inclusion in the HCB recipient's case records within ten (10) working days of the prior authorization request; and

(c) Upon approval or denial of a prior authorization request, the department shall provide written notification to the HCB agency, the ADHC center, and the HCB recipient.

Section 6. Consumer Directed Option. (1) Covered services and supports provided to an HCB recipient participating in CDO shall include:

(a) A home and community support service which shall:

1. Be available only under the consumer directed option;

2. Be provided in the consumer's home or in the community;

3. Be based upon therapeutic goals and not diversional in nature; and

4. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO HCB services; or

(b) Goods and services which shall:

1. Be individualized;

2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the recipient;

3. Not include experimental goods or services; and

4. Not include chemical or physical restraints.

(2) To be covered, a CDO service shall be specified in the plan of care.

(3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or similar service provided in a non-CDO HCB setting.

(4) A consumer, including a married consumer, shall choose providers and a consumer's choice shall be reflected or documented in the plan of care.

(5) A consumer may designate a representative to act on the consumer's behalf. The CDO representative shall:

(a) Be twenty-one (21) years of age or older;

(b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and

(c) Be appointed by the consumer on a MAP 2000 form.

(6) A consumer may voluntarily terminate CDO services by completing a MAP 2000 and submitting it to the support broker.

(7) The department shall immediately terminate a consumer from CDO services if:

(a) Imminent danger to the consumer's health, safety, or welfare exists; or

(b) The consumer fails to pay patient liability.

(8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care.

(9) Prior to a consumer's termination from CDO services, the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination;

(b) Assist the consumer in developing a resolution and prevention plan;

(c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to resolve the issue, develop and implement a prevention plan or designate a CDO representative;

(d) Complete, and submit to the department, a MAP 2000 terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the consumer in transitioning back to traditional HCB services.

(10) Upon an involuntary termination of CDO services, the department shall:

(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and

(b) Except in a case where a consumer failed to pay patient liability, inform the consumer of the right to appeal the department's decision in accordance with Section 8 of this administrative regulation.

(11) A CDO provider shall:

(a) Be selected by the consumer;

(b) Submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;

(c) Be eighteen (18) years of age or older;

(d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Be able to communicate effectively with the consumer, consumer representative or family;

(f) Be able to understand and carry out instructions;

(g) Be able to keep records as required by the consumer;

(h) Submit to a criminal background check;

(i) Submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100, Nurse aid abuse registry, home health aide abuse registry, and hearing procedures, and not be found on the registry;

(j) Not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (3),

(k) Complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(l) Be approved by the department;

(m) Maintain and submit timesheets documenting hours worked; and

(n) Be a friend, spouse, parent, family member, other relative, employee of a provider agency or other person hired by the consumer.

(12) A parent, parents combined or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of children who receive waiver services.

(13)(a) The department shall establish a budget for a consumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer's budget shall equal the average per capita historical

costs of HCB recipients minus five (5) percent.

(b) Cost of services authorized by the department for the individual's prior year plan of care but not utilized may be added to the budget if necessary to meet the individual's needs.

(c) The department shall adjust a consumer's budget based on the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and
2. The department approves the adjustment.

(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;
2. The cost effectiveness of the proposed services; and
3. Protection of the consumer's health, safety and welfare.

(f) A consumer's budget shall not exceed the average per capital cost of services provided to individuals in a NF.

(14) Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.

(15) A support broker shall:

- (a) Provide any needed assistance to a consumer with any aspect of CDO or blended services;
- (b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;
- (c) Comply with all applicable federal and state laws and requirements;
- (d) Continually monitor a consumer's health, safety and welfare; and
- (e) Complete or revise a plan of care using person-centered planning principles.

(16)(a) For a CDO participant, a support broker may conduct an assessment or reassessment; and

(b) A CDO assessment or reassessment performed by a support broker shall comply with the assessment or reassessment provisions established in Section 5(2) of this administrative regulation.

**Section 7. Use of Electronic Signatures.** (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A home health provider that chooses to use electronic signatures shall:

- (a) Develop and implement a written security policy that shall:
  1. Be adhered to by each of the provider's employees, officers, agents, and contractors;
  2. Identify each electronic signature for which an individual has access; and
  3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
- (b) Develop a consent form that shall:
  1. Be completed and executed by each individual using an electronic signature;
  2. Attest to the signature's authenticity; and
  3. Include a statement indicating that the individual has been notified of his responsibility in allowing the use of the electronic signature; and
- (c) Provide the department with:
  1. A copy of the provider's electronic signature policy;
  2. The signed consent form; and
  3. The original filed signature immediately upon request.

**Section 8. Appeal Rights.** An appeal of a department determination regarding NF level of care or services to an HCB recipient or a consumer shall be in accordance with 907 KAR 1 563.

**Section 9. Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) "Department for Medicaid Services Adult Day Health Care Services Manual", May 2005 edition;

(b) "Department for Medicaid Services Home and Community Based Waiver Services Manual", September 2006 edition;

(c) "Person Centered Planning: Guiding Principles", March 2005 edition;

(d) "Technical Criteria for Reviewing Ancillary Services for Adults", November 2003 edition;

(e) "MAP-24, The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services Memorandum", February 2001 edition;

(f) "MAP-95 Request for Equipment Form" June 2007[September-2002] edition;

(g) "MAP 109, Plan of Care/Prior Authorization for HCB Waiver Services", March 2007 edition;

(h) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", January 2000 edition; and

(i) "MAP-351, The Department for Medicaid Services, Medicaid Waiver Assessment", March 2007 edition;

(j) "MAP 2000, Initiation/Termination of Consumer Directed Option (CDO)", March 2007, edition; and

(k) "MAP-10, Waiver Services", March 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4.30 p.m.

SHAWN M. CROUCH, Commissioner

MARCK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 28, 2007

FILED WITH LRC: December 5, 2007 at 11 a.m.

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions for home and community based waiver services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions for the home and community based waiver services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions for the home and community based waiver services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the provisions for the home and community based waiver services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds goods and services to the consumer directed option; clarifies various policies such as documentation requirements, respite hours, respite for children; and alters consumer directed option (CDO) budget caps consistent with the other two (2) programs offering CDO.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add goods and services to the consumer-directed option established by KRS 205.5606, to clarify various policies and to cap CDO budgets consistent with the caps in other programs offering CDO. The CDO expansion is necessary to provide more options for consumers consistent with KRS 205.5606.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 205.2605 and 205 5606 by adding goods and services to the con-

sumer-directed option.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by adding goods and services to the consumer-directed option accordance with KRS 205.5605 and 5606.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect Medicaid's home and community based waiver recipients. Currently, there are approximately 13,000 members enrolled in the home and community based waiver program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will have to develop and maintain complaint reporting and documentation processes and will have to document level of care determinations and prior authorizations in an individual's record as a result of this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendments are not expected to impose any cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The amendments are expected to generate enhanced health care outcomes as well as options for recipients.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates additional costs as the consumer directed option is expanding to include goods and services; however, the specific amount of costs is indeterminable at this time. DMS does not anticipate costs exceeding funds available within the current budget.

(b) On a continuing basis: DMS anticipates additional costs as the consumer directed option is expanding to goods and services; however, the specific amount of costs is indeterminable at this time. DMS does not anticipate costs exceeding funds available within the current budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will

affect each Medicaid home and community based waiver recipient who opts to participate in the consumer directed option program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required by KRS 205.5605 and 205.5606.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue for state or local government during the first year of program administration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue for state or local government during subsequent years of program administration.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates additional costs as the consumer directed option is expanding to include goods and services; however, the specific amount of costs is indeterminable at this time. DMS does not anticipate costs exceeding funds available within the current budget.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates additional costs as the consumer directed option is expanding to include goods and services; however, the specific amount of costs is indeterminable at this time. DMS does not anticipate costs exceeding funds available within the current budget.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \_\_\_\_\_

Expenditures (+/-): \_\_\_\_\_

Other Explanation: No additional expenditures are necessary to implement this amendment.

#### STATEMENT OF EMERGENCY 907 KAR 1:604E

This emergency administrative regulation is being promulgated to amend Medicaid eligibility in order to allow individuals to work and maintain, rather than forfeit, Medicaid eligibility. It is amended in conjunction with four (4) other administrative regulations accomplishing the same goal 907 KAR 1:011E, Technical eligibility requirements; 907 KAR 1:640E, Income standards for Medicaid; 907 KAR 1:645E, Resource standards for Medicaid; and 907 KAR 1:900E, KYHealth Choices benefit plans. This action must be taken on an emergency basis to protect the health, safety, and welfare of recipients by ensuring access to necessary care. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor  
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Administration and Financial Management  
(Emergency Amendment)

907 KAR 1:604E. Recipient cost-sharing.

RELATES TO. KRS 205.560, 205.6312, 205.6485, 205.8451, 319A.010, 327.010, 334A.020, 42 C.F.R. 430.10, 431.51, 447.15, 447.21, 447.50, 447.52, 447.53, 447.54, 447.59, 457.224, 457.310, 457.505, 457.510, 457.515, 457.520, 457.530, 457.535, 457.570, 42 U.S.C. 1396a, b, c, d, o, r-6, r-8, 1397aa-1397jj, 42 U.S.C. 1396a(1)(A), 1396a(a)(52), 1396a(aa), 1396a(l)(1)(B), (C), (D),

1396d(a)(4)(C), 1396d(o), 1396u-1

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6312(5), 205.6485(1), 42 C.F.R. 431.51, 447.15, 447.51, 447.53, 447.54, 447.55, 447.57, 457.535, 457.560, 42 U.S.C. 1396r-6(b)(5), Pub. L. 106-170, 109-171

EFFECTIVE: November 20, 2007

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.6312(5) requires the cabinet to promulgate administrative regulations that implement copayments or other similar charges for Medicaid recipients. KRS 205.6485(1) requires the cabinet to establish, by administrative regulation, premiums for families with children in the Kentucky Children's Health Insurance Program. 42 U.S.C. 1396r-6(b)(5) allows for a monthly premium in the second six (6) months of transitional medical assistance. This administrative regulation establishes the provisions relating to imposing and collecting copayments, coinsurance and premiums from certain recipients.

Section 1. Definitions. (1) "Coinsurance" means a percentage of the cost of a Medicaid benefit that a recipient is required to pay.

(2) "Comprehensive choices" means a benefit plan for an individual who:

(a) Meets the nursing facility patient status criteria established in 907 KAR 1.022;

(b) Receives services through either:

1. A nursing facility in accordance with 907 KAR 1.022;

2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3.090,

3. The Home and Community Based Waiver Program in accordance with 907 KAR 1.160; or

4. The Model Waiver II Program in accordance with 907 KAR 1.595, and

(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R

(3) "Copayment" means a dollar amount representing the portion of the cost of a Medicaid benefit that a recipient is required to pay.

(4) "Department" means the Department for Medicaid Services or its designee.

(5) "Drug" means a covered drug provided in accordance with 907 KAR 1.019 for which the Department for Medicaid Services provides reimbursement

(6) "Family choices" means a benefit plan for an individual who:

(a) Is covered pursuant to

1. 42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u - 1,

2. 42 U.S.C. 1396a(a)(52) and 1396r - 6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);

3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);

4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C),

5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D), or

6. 42 C.F.R. 457.310; and

(b) Has a designated package code of 2, 3, 4, or 5.

(7) "Federal Poverty Level" or "FPL" means guidelines that are updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2).

(8) "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:

(a) Caretaker relatives who:

1. Receive K-TAP and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP and are deprived due to death, inca-

capacity, or absence; or

3. Do not receive K-TAP and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1.022; or

2. Receive SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1.022;

(c) Blind individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1.022; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1.022;

(d) Disabled individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1.022, including children; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1.022;

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1.022;

(f) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1.022;

(g) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1.022; [or]

(h) Pregnant women; or

(i) Medicaid works individuals.

(9)(a) "KCHIP" means the Kentucky Children's Health Insurance Program.

(10)(a) "KCHIP - Separate Program" means a health benefit program for individuals with eligibility determined in accordance with 907 KAR 4.030, Section 2.

(11)(a) "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

(12) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(g)(2)(B) would be considered to be receiving supplement security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets income standards established in 907 KAR 1.640, Income standards for Medicaid; and

(e) Meets resource standards established in 907 KAR 1.645, Resource standards for Medicaid.

(13)(a) "Nonemergency" means a condition which does not require an emergency service pursuant to 42 C.F.R. 447.53.

(14)(a) "Nonpreferred brand name drug" means a brand name drug that is not on the department's preferred drug list.

(15)(a) "Optimum choices" means a benefit plan for an individual who:

(a) Meets the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1.022;

(b) Receives services through either:

1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1.022; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and  
(c) Has a designated package code of S, T, U, V, W, X, Z, O, or 1.

(16)(44) "Preferred brand-name drug" means a brand-name drug for which no generic equivalent exists which has a more favorable cost to the department and which prescribers are encouraged to prescribe, if medically appropriate.

(17)(45) "Premium" means an amount paid periodically to purchase health care benefits.

(18)(46) "Recipient" is defined in KRS 205.8451 and applies to an individual who has been determined eligible to receive benefits under the state's Title XIX or Title XXI program in accordance with 907 KAR Chapters 1 through 4.

(19)(47) "Transitional medical assistance" or "TMA" means an extension of Medicaid benefits for up to twelve (12) months for families who lose Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards in accordance with 907 KAR 1:011, Section 5(8)(b).

Section 2. Comprehensive Choices Copayments and Coinsurance. (1) Except for an individual excluded pursuant to Section 6(1) of this administrative regulation, a recipient of the comprehensive choices plan shall pay the copayment or coinsurance amount established in this table, with the corresponding provider reimbursement deductions.

Benefit	Copayment or Coinsurance Amount	Amount of Copayment or Coinsurance Deducted from Provider Reimbursement
Acute inpatient hospital admission	\$10 copayment	Full amount of the copayment
Outpatient hospital or ambulatory surgical center visit	\$3 copayment	Full amount of the copayment
Generic prescription drug or an atypical anti-psychotic drug if no generic equivalent for the atypical anti-psychotic drug exists for a recipient who does not have Medicare Part D drug coverage	\$1 copayment	Full amount of the copayment
Preferred brand name drug for a recipient who does not have Medicare Part D drug coverage	\$2 copayment	Full amount of the copayment
Nonpreferred brand name drug for a recipient who does not have Medicare Part D drug coverage	5% coinsurance, not to exceed \$20 per non-preferred brand name drug prescription	Full amount of the coinsurance, not to exceed \$20 per non-preferred brand name drug prescription
Emergency room for a nonemergency visit	5% coinsurance, up to a maximum of \$6	No deduction
DMEPOS	3% coinsurance up to a maximum of \$15 per item	The amount of the coinsurance or, if applicable, \$15
Podiatry office visit	\$2 copayment	Full amount of the copayment
[Ophthalmological or optometric office visit (99000 series-evaluation and man-	[\$2 copayment]	[Full amount of the copayment]

agement codes)]

- (2) A recipient shall not be liable for more than:  
(a) \$225 per calendar year for prescription drug copayments or coinsurance; or  
(b) \$225 per calendar year for service copayments or coinsurance.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(4) If a service or benefit is not listed in the comprehensive choices cost-sharing gnd, the cost-sharing obligation shall be \$0 for that service or benefit for an individual in the comprehensive choices benefit plan.

Section 3. Family Choices Copayments and Coinsurance. (1)(a) Only KCHIP children, except for any individual excluded in accordance with Section 6(1), shall be family choices individuals subject to copayments or coinsurance.

(b) An individual referenced in paragraph (a) of this subsection shall pay the copayment or coinsurance amounts established in the following table, along with the corresponding provider reimbursement deductions

Benefit	Copayment or Coinsurance Amount	Amount of Copayment or Coinsurance Deducted from Provider Reimbursement
Allergy service or testing (no copayment exists for injections)	\$2 copayment	Full amount of copayment
Generic prescription drug or atypical anti-psychotic drug if no generic equivalent exists	\$1 copayment	Full amount of copayment
Preferred brand name drug	\$2 copayment	Full amount of copayment
Nonpreferred brand name drug	\$3 copayment	Full amount of the copayment
Emergency room for a nonemergency visit	5% coinsurance, up to a maximum of \$6	No deduction

- (2) A recipient shall not be liable for more than:  
(a) \$225 per calendar year for prescription drug copayments or coinsurance; or  
(b) \$225 per calendar year for service copayments or coinsurance.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(4) If a service or benefit is not listed in the family choices cost-sharing gnd, the cost-sharing obligation shall be \$0 for that service or benefit for an individual in the family choices benefit plan.

Section 4. Global Choices Copayments and Coinsurance (1) Except for an individual excluded pursuant to Section 6(1) of this administrative regulation, a recipient of the global choices plan shall pay the copayment or coinsurance amount established in this table, with the corresponding provider reimbursement deductions.

Benefit	Copayment or Coinsurance	Copayment or Coinsurance Amount Deducted from Provider Reimbursement
Acute inpatient hospital admission	\$50 copayment	Full amount of copayment
Outpatient hospital or ambulatory surgical center visit	\$3 copayment	Full amount of copayment
Laboratory, diagnostic or radiology service	\$3 copayment	Full amount of copayment
Physician services	\$2 copayment	No deduction
Visit to a rural health	\$2 copayment	Full amount of



clinic, a primary care center, or a federally qualified health center		copayment
Dental office visit	\$2 copayment	No deduction
Physical therapy	\$2 copayment	Full amount of the copayment
Speech therapy	\$1 copayment	Full amount of the copayment
Chiropractic office visit	\$2 copayment	Full amount of the copayment
Generic prescription drug or an atypical anti-psychotic drug if no generic equivalent for the atypical anti-psychotic drug exists for a recipient who does not have Medicare Part D drug coverage	\$1 copayment	Full amount of the copayment
Preferred brand name drug for a recipient who does not have Medicare Part D drug coverage	\$2 copayment	Full amount of the copayment
Nonpreferred brand name drug for a recipient who does not have Medicare Part D drug coverage	5% coinsurance, not to exceed \$20 per nonpreferred brand name drug prescription	Full amount of the coinsurance, not to exceed \$20 per nonpreferred brand name drug prescription

Emergency room for a nonemergency visit	5% coinsurance, up to a maximum of \$6	No deduction
DMEPOS	Three (3) percent coinsurance not to exceed \$15 per item	The amount of the coinsurance or, if applicable, \$15
Podiatry office visit	\$2 copayment	Full amount of the copayment
Ophthalmological or optometric office visit (99000 series evaluation and management codes)	\$2 copayment	Full amount of the copayment

## (2) Physician services shall:

(a) Include care provided by a physician, a certified pediatric and family nurse practitioner, a nurse midwife, an advanced registered nurse practitioner, or a physician assistant; and

(b) Not include a visit to a federally-qualified health center, rural health clinic, or a primary care center.

## (3) A recipient shall not be liable for more than:

(a) \$225 per calendar year for prescription drug copayments or coinsurance; or

(b) \$225 per calendar year for service copayments or coinsurance.

(4) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(5) If a service or benefit is not listed in the global choices cost-sharing grid, the cost-sharing obligation shall be \$0 for that service for an individual in the global choices benefit plan.

## Section 5. Optimum Choices Copayments and Coinsurance.

(1) Except for an individual excluded pursuant to Section 6(1) of this administrative regulation, a recipient of the optimum choices plan shall pay the copayment or coinsurance amount established in this table, with the corresponding provider reimbursement deductions.

Benefit	Copayment or Coinsurance	Amount of Copayment or Coinsurance
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	Amount	ance Deducted from Provider Reimbursement
Acute inpatient hospital admission	\$10 copayment	Full amount of the copayment
Outpatient hospital or ambulatory surgical center visit	\$3 copayment	Full amount of the copayment
Generic prescription drug or an atypical anti-psychotic drug if no generic equivalent for the atypical anti-psychotic drug exists for a recipient who does not have Medicare Part D drug coverage	\$1 copayment	Full amount of the copayment
Preferred brand name drug for a recipient who does not have Medicare Part D drug coverage	\$2 copayment	Full amount of the copayment
Nonpreferred brand name drug for a recipient who does not have Medicare Part D drug coverage	5% coinsurance, not to exceed \$20 per nonpreferred brand name drug prescription	Full amount of the coinsurance, not to exceed \$20 per nonpreferred brand name drug prescription
Emergency room for a nonemergency visit	5% coinsurance, up to a maximum of \$6	No deduction
DMEPOS	3% coinsurance up to a maximum of \$15 per item	The amount of the coinsurance or, if applicable, \$15
Podiatry office visit	\$2 copayment	Full amount of the copayment
[Ophthalmological or optometric office visit (99000 series evaluation and management codes)]	[\$2 copayment]	[Full amount of the copayment]

## (2) A recipient shall not be liable for more than:

(a) \$225 per calendar year for prescription drug copayments or coinsurance; or

(b) \$225 per calendar year for service copayments or coinsurance.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(4) If a service or benefit is not listed in the optimum choices cost-sharing grid, the cost-sharing obligation shall be \$0 for that service or benefit for an individual in the optimum choices benefit plan.

Section 6. Copayment, Coinsurance and Premium General Provisions and Exclusions. (1) The department shall impose no cost sharing for the following:

(a) A service furnished to an individual who has reached his or her 18th birthday, but has not turned nineteen (19) required to be provided medical assistance under 42 U.S.C. 1396a(a)(10)(A)(i)(I), including services furnished to an individual with respect to whom aid or assistance is made available under Title IV, Part B (42 U.S.C. 620 to 629i) to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under Title IV, Part E (42 U.S.C. 670 to 679b), without regard to age;

(b) A preventive service (for example, well baby and well child care and immunizations) provided to a child under eighteen (18) years of age regardless of family income;

(c) A service furnished to a pregnant woman;

(d) A service furnished to a terminally ill individual who is re-

ceiving hospice care as defined in 42 U.S.C. 1396d(o);

(e) A service furnished to an individual who is an inpatient in a hospital, nursing facility, intermediate care facility for individuals with mental retardation or a developmental disability, or other medical institution, if the individual is required, as a condition of receiving services in the institution under Kentucky's Medicaid Program, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs;

(f) An emergency service as defined by 42 C.F.R. 447.53;

(g) A family planning service or supply as described in 42 U.S.C. 1396d (a)(4)(C); or

(h) A service furnished to a woman who is receiving medical assistance via the application of 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII) and 1396a(aa).

(2) The department has determined that any individual liable for a copayment, coinsurance amount or premium shall:

(a) Be able to pay a required copayment, coinsurance amount or premium; and

(b) Be responsible for a required copayment, coinsurance or premium.

(3) A pharmacy provider or supplier, including a pharmaceutical manufacturer as defined in 42 U.S.C. 1396r-8(k)(5), or a representative, employee, independent contractor or agent of a pharmaceutical manufacturer, shall not make a copayment or coinsurance amount for a recipient.

(4) A parent or guardian shall be responsible for a copayment, coinsurance amount or premium imposed on a dependent child under the age of twenty-one (21).

(5) Provisions regarding a provider's ability to deny a service or benefit based on a recipient's failure to make a required copayment or coinsurance payment shall be as established in KRS 205.6312(4) and 2006 Ky. Acts ch. 252 and in accordance with Pub.L. 109-171.

(6) A provider:

(a) Shall collect from a recipient the copayment, coinsurance amount, or premium as imposed by the department for a recipient in accordance with this administrative regulation;

(b) Shall not waive a copayment, coinsurance amount, or premium obligation as imposed by the department for a recipient; and

(c) May collect a copayment, coinsurance amount or premium at the time a benefit is provided or at a later date.

(7) Cumulative cost sharing for premium payments and copayments for a family with children who receive benefits under Title XXI, 42 U.S.C. 1397aa to 1397jj, shall be limited to five (5) percent of the annual family income.

(8) A monthly premium for a family who receives benefits under 42 U.S.C. 1396r-6(b) shall not exceed three (3) percent of:

(a) The family's average gross monthly income; or

(b) The family's average gross monthly income minus the average monthly costs of child care necessary for the employment of the caretaker relative.

(9) The department shall not increase its reimbursement to a provider to offset an uncollected copayment, coinsurance amount or premium from a recipient.

Section 7. Premiums for KCHIP - Separate Program Recipients.

(1) A family with children participating in the KCHIP Separate Program shall pay a premium of twenty (20) dollars per family, per month.

(2)(a) The family of a new KCHIP Separate Program eligible shall be required to pay a premium beginning with the first full month of benefits after the month of application.

(b) Benefits shall be effective with the date of application if the premium specified in paragraph (a) of this subsection has been paid.

(3) Retroactive eligibility as described in 907 KAR 1:605, Section 2(3), shall not apply to a recipient participating in the KCHIP Separate Program

(4)(a) If a family fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.

(b)1 A KCHIP Separate Program recipient shall be eligible for reenrollment upon payment of the missed premium.

2. If twelve (12) months have elapsed since a missed premium, a KCHIP Separate Program recipient shall not be required to pay the missed premium before reenrolling

Section 8. Premiums for Transitional Medical Assistance Recipients. (1) A family receiving a second six (6) months of TMA, whose monthly countable earned income is greater than 100 percent of the federal poverty limit, shall pay a premium of thirty (30) dollars per family, per month.

(2) If a TMA family fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the benefit month for which the premium has not been paid unless the family has established to the satisfaction of the department that good cause existed for failure to pay the premium on a timely basis. Good cause shall exist under the following circumstances:

(a) An immediate family member living in the home was institutionalized or died during the payment month;

(b) The family was victim of a natural disaster including flood, storm, earthquake, or serious fire;

(c) The caretaker relative was out of town for the payment month; or

(d) The family moved and reported the move timely, but the move resulted in:

1. A delay in receiving the billing notice; or

2. Failure to receive the billing notice.

Section 9. Premiums for Medicaid Works Individuals. (1)(a) A Medicaid works individual shall be required to pay a monthly premium based on income used to determine eligibility for the program.

(b) The monthly premium shall be:

1. Thirty-five (35) dollars for an individual whose income is greater than 100% but no more than 150% of the FPL;

2. Forty-five (45) dollars for an individual whose income is greater than 150% but no more than 200% of the FPL; and

3. Fifty-five (55) dollars for an individual whose income is greater than 200% but no more than 250% of the FPL.

(2) An individual whose family income is equal to or below 100% of the FPL shall not be required to pay a monthly premium.

(3) A Medicaid works individual shall be required to begin paying a premium with the first full month of benefits after the month of application.

(4) Benefits shall be effective with the date of application if the premium specified in paragraph (1) of this section has been paid.

(5) Retroactive eligibility pursuant to 907 KAR 1:605, Medicaid procedures for determining initial and continuing eligibility, Section 2(3) shall not apply to a Medicaid works individual.

(6) If a recipient fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.

(7) A Medicaid works individual shall be eligible for reenrollment upon payment of the missed premium providing all other technical eligibility, income, and resource standards continue to be met.

(8) If twelve (12) months have elapsed since a missed premium, a Medicaid works individual shall not be required to pay the missed premium before reenrolling.

Section 10. Notices and Collection of Premiums. (1) Premiums shall be collected in accordance with Sections 7 and 8 of this administrative regulation.

(2) The department shall give advance written notice of the:

(a) Premium amount; and

(b) Date the premium is due.

(3) To continue to receive benefits, a family shall pay a premium:

(a) In full; and

(b) In advance.

(4) If a family pays the required premiums semiannually or quarterly in advance, they shall receive a ten (10) percent discount.

Section 11.[40] Provisions for Recipients in Medicaid-Managed Care. (1) A managed care entity:

(a) Shall not impose on a recipient receiving services through a

managed-care entity operating in accordance with 907 KAR 1:705 a copayment, coinsurance or premium that exceeds a copayment, coinsurance or premium established in this administrative regulation, and

(b) May impose upon a recipient referenced in paragraph (a) of this subsection:

1. A lower copayment, coinsurance or premium than established in this administrative regulation; or

2. No copayment, coinsurance or premium.

(2) A six (6) month guarantee of eligibility as described in 907 KAR 1:705, Section 3(6) shall not apply to a recipient required to pay a premium pursuant to Section 7 of this administrative regulation.

Section 12[44]- Freedom of Choice. In accordance with 42 C.F.R. 431.51, a recipient may obtain services from any qualified provider who is willing to provide services to that particular recipient.

Section 13[42]- Notice of Discontinuance, Hearings, and Appeal Rights.

(1) The department shall give written notice of, and an opportunity to pay, past due premiums prior to discontinuance of benefits for nonpayment of a premium.

(2)(a) If a family's income has declined, the family shall submit documentation showing the decline in income.

(b) Following receipt of the documentation, the department shall determine if the family is required to pay the premiums established in Section 7 or 8 of this administrative regulation using the new income level.

(c) If the family is required to pay the premium and the premium has not been paid, the benefits shall be discontinued in accordance with Section 7(4)(a) or 8(2) of this administrative regulation.

(d) If the family is not required to pay the premium, benefits shall be continued under an appropriate eligibility category.

(3) The department shall provide the recipient with an opportunity for a hearing in accordance with 907 KAR 1:560 upon discontinuing benefits for nonpayment of premiums.

(4) An appeal of a department decision regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 15, 2007

FILED WITH AGENCY: November 20, 2007 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone: (502) 564-7905, fax: (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Stuart Owen (502) 564-6204 or Lisa Lee (502) 564-6890

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cost-sharing provisions for Medicaid and Kentucky Children's Health Insurance Program (KCHIP) recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish cost-sharing provisions for Medicaid and KCHIP recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.6312(5) and Pub L. 109-171 (aka the Deficit Reduction Act of 2005) by establishing cost-sharing provisions regarding Medicaid and KCHIP recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists and will continue to assist in the effective administration of the authorizing statutes by establishing the cost-sharing provisions related to Medicaid and KCHIP recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation: This amendment results from a congressional initiative to encourage states to adopt the option of allowing individuals with disabilities to purchase Medicaid coverage that is necessary to enable such individuals to maintain employment. The initiative creates a new Medicaid eligibility group known as Medicaid works individuals. Currently, individuals receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) who choose to work, lose Medicaid health benefits because their income exceeds the allowable limit. This initiative will allow individuals with disabilities who choose to work and whose income is less than or equal to 250% of the federal poverty level the opportunity to purchase Medicaid coverage by paying a premium. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The amendment also establishes premiums which are tiered based on federal poverty levels. In addition to establishing Medicaid works policy this administrative regulation corrects a prior inadvertent mistake by eliminating the ophthalmological and optometric office visit cost sharing for the comprehensive choices and optimum choices individuals.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to extend Medicaid coverage to individuals with disabilities who work. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The ophthalmological and optometric office visit cost sharing elimination is necessary to correct a prior inadvertent mistake.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B) and Pub.L. 106-170.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B) and Pub L. 106-170.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect individuals with disabilities between the ages of sixteen (16) and sixty-five (65) who choose to work and whose income is less than or equal to 250% of the federal poverty level.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Individuals choosing Medicaid coverage via the Medicaid works eligibility option must pay a monthly premium in order to receive benefits under this program. In addition, recipients must pay nominal copayments for specified services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Members eligible via the Medicaid works option will be subject to pharmacy and medical copayments that are capped at

\$225 each per year per recipient. Therefore, recipients the maximum amount of co-payments per recipient will be \$450 per year. In addition, recipients will be responsible for a monthly premium based on income levels. Premiums range from thirty-five (35) dollars to fifty-five (55) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals eligible via the Medicaid works option will receive pharmacy and medical benefits through the Medicaid program. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and reapply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the system modifications will cost \$36,275.

(b) On a continuing basis: DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year; however, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. Additionally, DMS anticipates that sixty-five (65) percent of recipients expected to enroll for coverage via the Medicaid works option will already be enrolled in another Medicaid program. Considering all factors, DMS projects total annual costs to be \$211,200, of which \$147,840 would be federal funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX, and matching funds of general fund appropriations and collections will be used to fund the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in funding will be necessary as DMS anticipates any increased cost will be absorbed within the existing Medicaid budget.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation increases and imposes certain designated cost-sharing requirements.

(9) Tiering: Is tiering applied? This administrative regulation includes tiering in order to tailor the cost-sharing provisions to individual medical needs and circumstances and to assist in transforming the Medicaid program in conjunction with a related administration regulation 907 KAR 1:900 (KyHealth Choices Benefit Packages). The transformed program provides innovative opportunities to Medicaid and Kentucky Children's Health Insurance Program (KCHIP) beneficiaries which will promote healthy lifestyles, personal accountability and responsible program governance for a healthier Commonwealth.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 U.S.C. 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 U.S.C. 1396 et. seq. This administrative regulation complies with federal statutes and regulations, including Pub.L. 109-171, governing the Medicaid program including the domain of recipient cost sharing.

2. State compliance standards. This administrative regulation complies with KRS 205 6312(5) by establishing cost-sharing provisions for Medicaid recipients, their spouses, or parents, under the provisions of Section 1916 of Title XIX of the Federal Social Security Act, 42 U.S.C. sec. 1396o. This administrative regulation complies with KRS 205 6485(1) by establishing the premium contribu-

tion per family of health insurance coverage available under the Kentucky Children's Health Insurance Program.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation establishes cost-sharing provisions for Medicaid recipients, their spouses, or parents, under the provisions of Section 1916 of Title XIX of the Federal Social Security Act, 42 U.S.C. sec. 1396o, and Public Law 109-171.4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment is necessary to assist in transforming the Medicaid Program in conjunction with a related administration regulation 907 KAR 1:900 (KyHealth Choices Benefit Packages). This action is necessary to maintain the viability of the Medicaid Program, to render it better oriented to recipient individual needs while best utilizing the resources available to the Medicaid Program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect an organization that chooses to hire an individual with a disability.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f) and 42 U.S.C. d(q)(2)(B) and Pub.L. 106-170. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates the enhanced coverage may result in additional cost; however, the measures are necessary to enhance access to health services. DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year. However, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. In addition, research shows that sixty-five (65) percent of individuals expected to participate in this option were already

enrolled in another Medicaid program. DMS anticipates offsets in premiums and, due to the fact that approximately sixty-five (65) percent of recipients in this program would move from another Medicaid Program, total annual costs are expected to be \$211,200, of which \$147,840 would be federal funds.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the enhanced coverage may result in additional cost; however, the measures are necessary to enhance access to health services. DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year. However, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. In addition, research shows that sixty-five (65) percent of individuals expected to participate in this option were already enrolled in another Medicaid Program. DMS anticipates offsets in premiums and, due to the fact that approximately sixty-five (65) percent of recipients in this program would move from another Medicaid program, total annual costs are expected to be \$211,200, of which \$147,840 would be federal funds.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-)  
Expenditures (+/-)  
Other Explanation:

STATEMENT OF EMERGENCY  
907 KAR 1:631E

This emergency administrative regulation is being promulgated to enhance vision service reimbursement and reduce provider administrative burden in order to ensure an adequate pool of vision providers. This action must be taken on an emergency basis to protect the health, safety and welfare of recipients by ensuring an adequate pool of providers and, thus, adequate recipient access to necessary care. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor  
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH SERVICES  
Department for Medicaid Services  
Division of Physicians and Specialty Services  
(Emergency Amendment)

907 KAR 1:631E. Reimbursement of Vision Program services.

RELATES TO: KRS 205.520, 42 C.F.R. 440.40, 440.60, 447 Subpart B, 42 U.S.C. 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), [EO-2004-726]

EFFECTIVE: November 20, 2007

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [the method for determining a] reimbursement provisions for vision services[for a Vision Program service].

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designated agent.

(2) "Global Insight Index" means an indication of changes in health care costs from year to year developed by Global Insight.

(3) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(4) "Ophthalmic dispenser" means a physician, optician, or optometrist, who is licensed to prepare and dispense lenses and eyeglasses in accordance with an original, written prescription.

(5)(3) "Resource-based relative value scale unit" or "RBRVS unit" means a value based on the service which takes into consideration the practitioners' work, practice expenses, liability insurance, and a geographic factor based on the prices of staffing and other resources required to provide the service in an area relative to national average price.

Section 2. Reimbursement for Covered Procedures and Materials for Optometrists. (1) With the exception of materials or a laboratory service, reimbursement for a covered service, within the optometrist's scope of licensure, shall be based on the optometrist's usual and customary actual billed charges up to the fixed upper limit per procedure established by the department using the Kentucky Medicaid fee schedule, specified in 907 KAR 3:010, Section 2(2)(2-4), developed from a resource-based relative value scale (RBRVS) on parity with physicians.

(2) If an RBRVS based fee has not been established, the department shall set a reasonable fixed upper limit for the procedure. The upper limit shall be determined following a review of rates paid for the service by three (3) other sources. The average of these rates shall be compared with similar procedures paid by the de-

partment to set the upper limit for the procedure.

(3) With the exception of the following dispensing services, the department shall use the Kentucky conversion factor for "all other services" as established in 907 KAR 3:010, Section 3(2)(b)(2)(2):

- (a) Fitting of spectacles;
- (b) Special spectacles fitting; and
- (c) Repair and adjustment of spectacles.

(4) Reimbursement for a dispensing service fee or a repair service fee shall be as follows:

Procedure	Upper Limit
92340 (Fitting of spectacles)	\$33
92341 (Fitting of spectacles)	\$38
92352 (Special spectacles fitting)	\$33
92353 (Special spectacles fitting)	\$39
92370 (Repair & adjust spectacles)	\$29

(5) The department shall:

(a) Reimburse for:

1. A single vision lens at twenty-eight (28) dollars per lens;

2. A bifocal lens at forty-three (43) dollars per lens; and

3. A multi-focal lens at fifty-six (56) dollars per lens; and

(b) Annually adjust the rates established in paragraph (a) of this subsection by the Global Insight Index.

(6)(a) The department shall reimburse for frames or a part of frames (not lenses) [Reimbursement for eyeglasses or a part of eyeglasses shall be made] at the optical laboratory cost of the materials not to exceed the upper limit for materials as established by the department.

(b) The upper payment limit for frames shall be fifty (50) dollars.

(c) An optical laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipient's medical records for postpayment review.

(7)(a)(6) Reimbursement for a covered clinical laboratory service shall be based on the Medicare allowable payment rates.

(b) For a laboratory service with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

Section 3. Maximum Reimbursement for Covered Procedures and Materials for Ophthalmic Dispensers. Reimbursement for a covered service within the ophthalmic dispenser's scope of licensure shall be in accordance with Section 2 of this administrative regulation.

Section 4. Reimbursement Limitations. (1) A telephone consultation shall be excluded from payment.

(2) Contact lenses shall be excluded from payment.

(3) Safety glasses shall be covered if proof of medical necessity is documented.

(4) A prism, if medically necessary, shall be added within the cost of the lenses.

(5) A press-on prism shall be excluded from payment.

Section 5. Third Party Liability Nonduplication of payments and third-party liability shall be in accordance with 907 KAR 1:005

Section 6. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY, November 20, 2007

FILED WITH LRC, November 20, 2007 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275

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## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-6204

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to vision service reimbursement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws that require provision of vision services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the limitations established in KRS 205.560(1) for the provision of vision services to Medicaid recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment establishes flat rate reimbursement for lenses as follows: twenty eight (28) dollars per lens for a single lens; forty three (43) dollars per lens for a bifocal lens and fifty six (56) dollars per lens for a multi-focal lens and abolishes the prior requirement that a provider submit documentation of acquisition cost for reimbursement purposes.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to reduce vision provider administrative burden and consequently encourage provider participation; thus, enhancing recipient access to care.

(c) How the amendment conforms to the content of the authorizing statutes. The amendment conforms to the content of the authorizing statutes by reducing vision provider administrative burden and consequently encourage provider participation; thus, enhancing recipient access to care.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by reducing vision provider administrative burden and consequently encourage provider participation; thus, enhancing recipient access to care.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect vision service providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities are not required to take any action to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed on regulated entities as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Vision service providers will benefit by the reduction of their administrative burden which in turn should encourage provider participation and benefit recipients via increased access to care.

(5) Provide an estimate of how much it will cost to implement this administrative regulation

(a) Initially: The Department for Medicaid Services (DMS) anticipates the amendments to the administrative regulation to cost DMS approximately \$489,000 (\$340,000 federal funds and \$149,000 state funds) annually.

(b) On a continuing basis: DMS anticipates the amendments to

the administrative regulation to cost DMS approximately \$489,000 (\$340,000 federal funds and \$149,000 state funds) annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The sources of funding to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Lenses are reimbursed differently due to the varied complexity of lens development (a single lens is not as complex as a bifocal lens which is not as complex as a multi-focal lens).

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No local government entity is affected; however, the Department for Medicaid Services is affected

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. State laws authorizing this action include 194A.030(2), 194A.050(1), 205.520(3). Federal regulations authorizing this action include 42 C.F.R. 441.30, 42 C.F.R. 447.200 and 42 C.F.R. 447.204.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates the amendments to the administrative regulation to cost DMS approximately \$489,000 (\$340,000 federal funds and \$149,000 state funds) annually.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the amendments to the administrative regulation to cost DMS approximately \$489,000 (\$340,000 federal funds and \$149,000 state funds) annually.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

#### STATEMENT OF EMERGENCY 907 KAR 1:640E

This emergency administrative regulation is being promulgated to amend Medicaid eligibility in order to allow individuals to work and maintain, rather than forfeit, Medicaid eligibility. It is amended

in conjunction with four (4) other administrative regulations accomplishing the same goal 907 KAR 1.011E, Technical eligibility requirements; 907 KAR 1:604E, Recipient cost sharing; 907 KAR 1:645E, Resource standards for Medicaid, and 907 KAR 1:900E, KYHealth Choices benefit plans. This action must be taken on an emergency basis to protect the health, safety, and welfare of recipients by ensuring access to necessary care. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor  
MARK D. BIRDWHISTELL, Secretary

#### CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Financial Management (Emergency Amendment)

#### 907 KAR 1:640E. Income standards for Medicaid.

RELATES TO: KRS 205.520, 38 U.S.C. 5503, 42 U.S.C. 1396jj(b), 1382a, 1397aa, 9902(2)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 435, 42 U.S.C. 1396a, b, d, 1397aa, Pub. L. 106-170

EFFECTIVE: November 20, 2007

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with 42 U.S.C. 1396 through 1396v. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the income standards by which eligibility is determined.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or disabled.

(2) "AFDC" means the Aid to Families with Dependent Children Program as it existed on July 16, 1996.

(3) "Child" means a person who:

(a) 1 a. Is under the age of eighteen (18); or  
b. Is under the age of nineteen (19) if the person is:

(i) In high school or the same level of vocational or training school; and

(ii) Expected to graduate before or during the month of his 19th birthday;

2. Is not self-supporting;

3. Is not a member of the Armed Forces of the United States; and

4. If previously emancipated by marriage, has returned to the home of his parents or to the home of another relative; or

(b) Has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(l)(1).

(4) "Family alternatives diversion payment" means a lump sum payment made to a K-TAP applicant to meet short-term emergency needs.

(5) "Federal register" means the daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.

(6) "Incapacity" means a condition of mind or body making a parent physically or mentally unable to provide the necessities of life for a child

(7) [(6)] "Income" means money received from statutory benefits (including Social Security, Veteran's Administration pension, black lung benefits, or railroad retirement benefits), pension plans, rental property, investments, or wages for labor or services.

(8) [(7)] "Lump sum income" means money received at one (1) time which is normally considered as income, including accumu-



lated back payments from Social Security, unemployment insurance, or workman's compensation; [.] back pay from employment; [.] money received from an insurance settlement, gift, inheritance, or lottery winning; [.] proceeds from a bankruptcy proceeding; [.] money withdrawn from an IRA, KEOGH plan, deferred compensation, tax deferred retirement plan, or other tax deferred asset.

(9) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(a)(2)(B), would be considered to be receiving supplemental security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets income standards established in this administrative regulation; and

(e) Meets resource standards established in 907 KAR 1:645, Resource standards for Medicaid.

(10)(9) "Minor parent" means a parent under the age of twenty-one (21).

(11)(9) "Official poverty income guidelines" means the poverty income guidelines which are:

(a) Updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 U.S.C. 9902(2); and

(b) The latest poverty guidelines available as of March 1 of the particular state fiscal year.

(12)(40) "SSI" means Supplemental Security Income Program.

Section 2. Income Limitations. (1) For the medically needy as described in 907 KAR 1:011, Technical eligibility requirements, income shall be determined by comparing adjusted income as required by Section 3 of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse, and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	\$2,600	\$217
2	3,200	267
3	3,700	308
4	4,600	383
5	5,400	450
6	6,100	508
7	6,800	567

For each additional family member, \$720 annually or sixty (60) dollars monthly shall be added to the scale.

(2) The following special factors shall be applicable for a pregnant woman or child eligible pursuant to 42 U.S.C. 1396a(e):

(a) A pregnant woman or a child under age one (1) shall have family income not exceeding 185 percent of the official poverty income guidelines;

(b) A child age one (1) or over but under age six (6) shall have family income not exceeding 133 percent of the official poverty income guidelines;

(c) A child born after September 30, 1983, who has attained six (6) years of age but has not attained nineteen (19) years of age shall have family income not exceeding 100 percent of the official poverty income guidelines;

(d) A pregnant woman or child who would be eligible under provisions of 42 U.S.C. 1396a(l) or 1397j(b) except for income in excess of the allowable standard shall not become eligible by spending down to the official poverty guidelines as described in Section 9 of this administrative regulation;

(e) A change of income that occurs after the determination of eligibility of a pregnant woman shall not affect the pregnant woman's eligibility through the remainder of the pregnancy including the postpartum period which ends at the end of the month con-

taining the 60th day of a period beginning on the last day of her pregnancy;

(f) A targeted low-income child as specified in 907 KAR 1:011, Technical eligibility requirements, Section 2(3)(h), shall have family income not exceeding 150 percent of the official poverty income guidelines.

(3) The following special income limits and provisions shall be applicable for a determination of eligibility of a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled working individual, or Medicare qualified individual.

(a) A qualified Medicare beneficiary shall have income not exceeding 100 percent of the official poverty income guidelines.

(b) A specified low-income Medicare beneficiary shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

(c) A Medicare qualified individual shall have income greater than 120 percent of the official poverty income guidelines but less than or equal to 135 percent of the official poverty income guidelines.

(d) A qualified disabled working individual shall have income not exceeding 200 percent of the official poverty income guidelines.

(4) Income shall be limited to the allowable amounts for the SSI Program for:

(a) A child who lost eligibility for supplemental security income benefits due to the change in the definition of childhood disability as established in 42 U.S.C. 1396a(a)(10); or

(b) A person with hemophilia who received a class action settlement as established in 42 C.F.R. 435.122.

(5) Income shall be limited to the allowable amounts for the State Supplementation Program for a pass through recipient as established in 42 C.F.R. 435.135.

(6) The following special income factors shall apply for a Medicaid works individual:

(a) Income for a Medicaid works individual's spouse shall not exceed \$45,000 per year;

(b) A Medicaid works individual's unearned income shall be less than the SSI standard plus twenty (20) dollars; and

(c) The combination of earned and unearned income for a Medicaid works individual must be less than 250% of the federal poverty level as listed and updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

Section 3. Income Disregards. In comparing income with the scale established in Section 2 of this administrative regulation, gross income shall be adjusted as follows:

(1) In an AFDC or family related Medicaid case, the standard work expense of an adult member or out-of-school child shall be deducted from gross earnings. For a person with either full-time or part-time employment, the standard work expense deduction shall be ninety (90) dollars per month. Earnings of an individual attending school who is a child or parent under age nineteen (19) or a child under age eighteen (18) who is a high school graduate shall be disregarded.

(2) In an AFDC or family related Medicaid case, a dependent child care work expense shall be allowed for a child who is living in the home of the caretaker and is related to the caretaker in accordance with 907 KAR 1:011, Technical eligibility requirements, Section 5(9)(b), for full-time and part-time employment.

(a) The dependent child care work expense shall be deducted after all other disregards have been applied.

(b) The dependent child care work expense allowed shall not exceed, per month:

1. \$200 for full-time or part-time employment per child under age two (2); and

2. \$175 for full-time employment or \$150 for part-time employment per:

a. Child age two (2) or above; or

b. Incapacitated adult.

(3) For an AFDC-related Medicaid case, a thirty (30) dollar and one-third (1/3) deduction of earned income shall be allowed in accordance with 921 KAR 2:016.

(4) Income disregards for:

(a) an ABD Medicaid case shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b).

(b) A Medicaid works individual shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b)]-income disregards shall be those applicable in the federal SSI program established in 42 U.S.C. 1382a(b)].

Section 4. Income of the Stepparent or Parent of a Minor Parent referred to as a "Grandparent". An incapacitated stepparent's income, or a grandparent's income, shall be considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. If the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income shall be considered available to the spouse or the grandparent's gross income shall be considered available to the minor parent in accordance with the requirements established in this section. The following disregards and exclusions from income shall be applied:

(1) The first ninety (90) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time;

(2) An amount equal to the appropriate income limitations scale established in Section 2 of this administrative regulation for the appropriate family size, for the support of the stepparent or grandparent and other individuals (not including the spouse or minor parent) living in the home whose needs are not taken into consideration in the Medicaid eligibility determination but are claimed by the stepparent or grandparent as dependents for purposes of determining federal personal income tax liability;

(3) Any amount actually paid by the stepparent or grandparent to an individual not living in the home who is claimed by him as a dependent for purposes of determining his personal income tax liability;

(4) A payment by the stepparent or grandparent for alimony or child support with respect to an individual not living in the household;

(5) Income of a stepparent or grandparent receiving SSI; and

(6) Verified medical expenses for the stepparent or grandparent and his dependents in the home.

Section 5. Lump Sum Income. For a Medicaid case, lump sum income shall be considered as income in the month received.

Section 6. Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill an approved plan for achieving self-support (PASS), impairment related work expense (IRWE) deduction, or the blind work expense (BWE) deduction shall be excluded from consideration.

(2) A payment or benefit from a federal statute, other than SSI benefits, shall be excluded from consideration as income if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.

(3) A cash payment intended specifically to enable an applicant or recipient to pay for medical or social services shall not be considered as available income in the month of receipt.

(4) A Federal Republic of Germany reparation payment shall not be considered available in the eligibility or post eligibility treatment of income of an individual in a nursing facility or hospital or who is receiving home and community based services under a waiver.

(5) A social security cost of living adjustment on January 1 of each year shall not be considered as available income for a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled working individual or Medicare qualified individual until after the month following the month in which the official poverty guideline promulgated by the Department of Health and Human Services U.S. Government is published.

(6) Any amount received from a victims compensation fund established by a state to aid victims of crime shall be excluded as income.

(7) A veteran or the spouse of a veteran residing in a nursing facility who is receiving a Veterans Administration (VA) benefit shall have ninety (90) dollars:

(a) Excluded as income in the Medicaid eligibility determination; and

(b) Excluded as income in the post eligibility determination process.

(8) Veterans Administration payments for unmet medical expenses (UME) and aid and attendance (A&A) shall be excluded in a Medicaid eligibility determination for a veteran or the spouse of a veteran residing in a nursing facility.

(a) Veterans Administration payments for unmet medical expenses (UME) and aid and attendance (A&A) shall be excluded in the post eligibility determination for a veteran or the spouse of a veteran residing in a nonstate-operated nursing facility.

(b) Veterans Administration payments for unmet medical expenses (UME) and aid and attendance (A&A) shall not be excluded in the post eligibility determination process for a veteran or the spouse of a veteran residing in a state-operated nursing facility.

(9) An Austrian Social Insurance payment based, in whole or in part, on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.

(10) An individual retirement account, KEOGH plan, or other tax deferred asset shall be excluded as income until withdrawn.

(11) Disaster relief assistance shall be excluded as income.

(12) Income which is exempted from consideration for purposes of computing eligibility for the comparable money payment program (AFDC and SSI) shall be excluded~~exempted from consideration by the department~~.

(13) In accordance with 42 C.F.R. 435.122 and Section 4735 of Pub.L. 105-33, a payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded as income.

(14) In accordance with 42 C.F.R. 435.122, any payment received by a person with hemophilia from a class action law suit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded as income.

(15) Family alternatives diversion payments shall be excluded as income.

(16) For an AFDC or family-related Medicaid case, a Medicaid recipient shall have the option to receive a one (1) time exclusion of two (2) months of earned income for new employment or increased wages acquired after approval and reported timely.

(17) For an AFDC-related or a family-related Medicaid case, interest and dividend income shall be excluded.

(18) All monies received by an individual from the Tobacco Settlement between the states and tobacco manufacturers shall be excluded

(19) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1936p(d)(4) and 907 KAR 1.650, Trust and transferred resource requirements for Medicaid, Section 3(5), shall be excluded.

Section 7. Consideration of State Supplementary Payments. For an individual receiving a state supplementary payment, that portion of the individual's income which is in excess of the basic maintenance standard (established in Section 2(1) of this administrative regulation) shall be applied to the special need which results in the supplementary payment.

Section 8. Pass-through Cases. (1)(a) An Increase in a Social Security payment shall be disregarded in determining eligibility for Medicaid benefits if:

1. The increase is a cost of living increase; and

2. The individual would otherwise be eligible for an SSI benefit or state supplementary payment.

(b) An individual who would otherwise be eligible for an SSI benefit or state supplementary payment shall remain eligible for the full scope of program benefits with no spend-down requirements, as established in Section 9 of this administrative regulation.

(2) For an individual who applied by July 1, 1988, the additional amount specified in 42 U.S.C. 1383c(b) shall be disregarded, meaning that amount of Social Security benefits to which a specified widow or widower was entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and

subsequent cost of living increases) an individual would be eligible for federal SSI benefits.

**Section 9. Spend-down Provisions.** (1) A technically eligible individual or family shall not be required to utilize protected income for medical expenses before qualifying for Medicaid.

(2) An individual with income in excess of the basic maintenance scale established in Section 2(1) of this administrative regulation may qualify for Medicaid in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

(3) Medical expenses incurred in a period prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income if the medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses.

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 15, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-6204 or Lisa Lee (502) 564-6890

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to Medicaid eligibility income standards.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to Medicaid eligibility income standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to Medicaid eligibility income standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to Medicaid eligibility income standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment results from a congressional initiative to encourage states to adopt the option of allowing individuals with disabilities to purchase Medicaid coverage that is necessary to enable such individuals to maintain employment. The initiative creates a new Medicaid eligibility group known as Medicaid works individuals. Currently, individuals receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) who choose to work, lose Medicaid health benefits because their income exceeds the allowable limit. This initiative will allow individuals with disabilities who choose to work and whose income is less than or equal to 250% of the federal poverty level the opportunity to purchase Medicaid coverage by paying a premium. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The special income factors established in this administrative regulation for Medicaid works individuals exceed those established for other recipients and result from a review of other states' standards as well as feedback from the advocate community.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary to extend Medicaid coverage to individuals with disabilities who work. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The special income factors established in this administrative regulation for Medicaid works individuals exceed those established for other recipients and result from a review of other states' standards as well as feedback from the advocate community.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 1396a(a)(10), 42 1396b(f), 42 1396d(q)(2)(B), and Pub.L. 106-170.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 1396a(a)(10), 42 1396b(f), 42 1396d(q)(2)(B), and Pub.L. 106-170.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect individuals with disabilities between the ages of sixteen (16) and sixty-five (65) who choose to work and whose income is less than or equal to 250% of the federal poverty level.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Individuals choosing Medicaid coverage via this option must pay a monthly premium in order to receive benefits under this program. In addition, recipients must pay nominal copayments for specified services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Members eligible via the Medicaid works option will be subject to pharmacy and medical copayments that are capped at \$225 each per year per recipient. Therefore, the maximum amount of copayments per recipient will be \$450 per year. In addition, recipients will be responsible for a monthly premium based on income levels. Premiums range from thirty-five (35) dollars to fifty-five (55) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals eligible via the Medicaid works option will receive pharmacy and medical benefits through the Medicaid program. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The special income factors established in this administrative regulation for Medicaid works individuals exceed those established for other recipients and result from a review of other states' standards as well as feedback from the advocate community.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the system modifications will cost \$36,275.

(b) On a continuing basis: DMS anticipates medical and phar-

maceutical costs to be approximately \$912,000 during the first year; however, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. Additionally, DMS anticipates that sixty-five (65) percent of recipients expected to enroll for coverage via the Medicaid works option will already be enrolled in another Medicaid Program. Considering all factors, DMS projects total annual costs to be \$211,200, of which \$147,840 would be federal funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act, matching funds from general fund appropriations, and monthly premium payments made by recipients participating in the program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding will be necessary as DMS anticipates any increased cost will be absorbed within the existing Medicaid budget.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes monthly premium fees for recipients eligible via the Medicaid works option.

(9) Tiering: Is tiering applied? Tiering is applied to monthly premium amounts. The monthly premium is based on income brackets in order to make the program affordable to individuals in the lower income brackets. Recipients whose monthly income is below 100% of the federal poverty level will pay no premium while recipients above this level will vary with each increase of fifty (50) percent or more.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Centers for Medicare and Medicaid Services (CMS) does not mandate that state Medicaid programs cover working individuals who are disabled; however, relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. CMS does not mandate that state Medicaid programs cover working individuals who are disabled; however, relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170. Provisions established in this administrative regulation conform to the federal requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, than federal, requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, than federal, requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect an organization that chooses to hire an individual with a disability.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Relevant

provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. d(q)(2)(B), and Pub.L. 106-170. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that the Medicaid Management Information System (MMIS) modifications associated with this initiative will cost approximately \$36,275.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the enhanced coverage may result in additional cost; however, the measures are necessary to enhance access to health services. DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year. However, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. In addition, research shows that sixty-five (65) percent of individuals expected to participate in this option were already enrolled in another Medicaid Program. DMS anticipates offsets in premiums and, due to the fact that approximately sixty-five (65) percent of recipients in this program would move from another Medicaid program, total annual costs are expected to be \$211,200, of which \$147,840 would be federal funds.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

#### STATEMENT OF EMERGENCY 907 KAR 1:645E

This emergency administrative regulation is being promulgated to amend Medicaid eligibility in order to allow individuals to work and maintain, rather than forfeit, Medicaid eligibility. It is amended in conjunction with four (4) other administrative regulations accomplishing the same goal: 907 KAR 1:011E, Technical eligibility requirements; 907 KAR 1:604E, Recipient cost sharing; 907 KAR 1:640E, Income standards for Medicaid and 907 KAR 1.900E, Kentucky Health Choices benefit plans. This action must be taken on an emergency basis to protect the health, safety, and welfare of recipients by ensuring access to necessary care. This emergency administrative regulation shall be replaced by an ordinary regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regula-

tion.

ERNIE FLETCHER, Governor  
MARK D. BIRDWHISTELL, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Administration and Financial Management**  
**(Emergency Amendment)**

**907 KAR 1:645E. Resource standards for Medicaid.**

RELATES TO: KRS 205.520, 42 C.F.R. Part 435, 38 U.S.C. 5503, 42 U.S.C. 1396a, b, d, 1397j(b), p, Pub. L. 109-171  
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 435.840, 435.843, and 42 U.S.C. 1396a(l)(3), d, Pub. L. 106-170

EFFECTIVE: November 20, 2007

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the resource standards for determining eligibility for Medicaid.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or has a disability.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Homestead" means property which an individual:

- (a) Has an ownership interest in; and
- (b) Uses as his or her principal place of residence.

(4) "Individual development account" means an account containing funds for the purpose of continuing education, purchasing a first home, business capitalization, or other purposes allowed by federal regulations or clarifications which meets the criteria established in 921 KAR 2:016, Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).

(5) "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

- (a) Death;
- (b) Continued voluntary or involuntary absence;
- (c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or
- (d) Unemployment of one (1) parent if both parents are in the home

(6) "Liquid resource" means cash, savings accounts, checking accounts, money market accounts, certificates of deposit, bonds and stocks.

(7) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B) would be considered to be receiving supplemental security income.

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

- 1. Paycheck stubs;
- 2. Tax returns;
- 3. 1099 forms; or
- 4. Proof of quarterly estimated tax;

(d) Meets income standards established in 907 KAR 1:640. Income standards for Medicaid; and

(e) Meets resource standards established in this administrative regulation.

(8) "Permanent institutionalization" means residing in a nursing facility or intermediate care facility for the mentally retarded and developmentally disabled for six (6) months or more.

(9)(a) "Poverty level guidelines" means the poverty income guidelines updated annually in the Federal Register by the United

States Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).

(10)(a) "Real property" means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.

(11)(a) "Resources" mean cash money and other personal property or real property that an individual:

- (a) Owns;
- (b) Has the right, authority, or power to convert to cash; and
- (c) Is not legally restricted for support and maintenance.

(12)(a) "SSI" means the Social Security Administration Program called supplemental security income.

Section 2. Resource Limitations. (1) For the medically needy, as established in 907 KAR 1.011, Technical eligibility requirements, the upper limit for resources for a family size of one (1) and for a family size of two (2) shall be \$2,000 and \$4,000 respectively, with fifty (50) dollars for each additional member.

(2) For a pregnant woman or a child meeting the following criteria, resources shall be disregarded for:

- (a) A child under age one (1);
- (b) A child who is at least age one (1) but under age six (6);
- (c) A child who is at least age six (6) but under age nineteen (19) who is eligible under federal poverty level guidelines; or
- (d) A targeted low income child, as defined in 42 U.S.C. 1397j(b), from birth to age nineteen (19).

(3) For a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified working disabled individual, or a Medicare qualified individual, resources shall be limited to twice the allowable amount for the SSI Program.

(4) For a pass-through recipient, as established in 907 KAR 1:640, a person with hemophilia who received a settlement in a class action lawsuit as described in 907 KAR 1.011, or a child who lost supplemental security income eligibility due to the change in definition of childhood disability as established in 907 KAR 1.011, Technical eligibility requirements, resources shall be limited to the allowable amounts for the SSI Program.

(5) For an AFDC-related Medicaid case, the resource limit shall be \$1,000.

(6) In accordance with 42 U.S.C. 1396p, an individual shall not be eligible for Medicaid nursing facility services or other Medicaid long-term care services if the individual's equity interest in his or her home exceeds \$500,000 unless:

- (a) The individual has a spouse who is lawfully residing in the individual's home;
- (b) The individual has a child under the age of twenty-one (21) who is lawfully residing in the individual's home; or
- (c) The individual has a child of any age who is blind or permanently and totally disabled who is lawfully residing in the individual's home.

(7) Resources for a Medicaid works individual shall not exceed \$5,000 per individual or \$10,000 per couple.

Section 3. Resource Exclusions. (1)(a) A homestead, household or personal effects, and farm equipment shall be excluded from consideration without limitation on value.

(b) After permanent institutionalization, property shall cease to be a homestead unless:

- 1. A spouse or other dependent family member continues to reside there; or
- 2. A signed statement verifies that the permanently-institutionalized individual intends to return to the homestead.

The statement shall:

a. Be signed by:

- (i) The permanently-institutionalized individual;
- (ii) A representative payee;
- (iii) A person who has power of attorney for the individual;
- (iv) The individual's guardian; or
- (v) Another legal representative; and

b. Require annual renewal.

(2) For an adult Medicaid case or a Medicaid works individual:

(a) 1. Equity of \$6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, shall

be excluded from consideration.

2. The value of property, including the tools of a tradesperson or the machinery or livestock of a farmer, shall be excluded from consideration as a resource if the property:

- a. Is essential for self-support for the individual or spouse, or family group in the instance of a family with a child; and
- b. Is used in a trade or business or by the individual or member of the family group as an employee.

(b) Except as provided in paragraph (c) of this subsection, equity of \$4,500 in automobiles shall be excluded from consideration.

(c) If an automobile is used as a home, for employment, to obtain medical treatment of a specific or regular medical problem, or is specially equipped for use by an individual with a disability, the total value of the automobile shall be excluded.

(d) A payment or benefit from a federal statutory program, other than an SSI benefit, shall be excluded from consideration as a resource if precluded from consideration in an SSI determination of eligibility by the specific terms of the statute.

(3) For an ABD Medicaid case:

(a) Real property or nonreal property shall be excluded from consideration if it can be demonstrated the individual is making a reasonable effort to sell the property at fair market value or for other valuable consideration.

(b)1. Nonhome property, which was previously the homestead property of a permanently-institutionalized individual, shall be excluded for six (6) months if there is a verified effort to sell the property at fair market value.

2. Additional time to sell the property may be allowed, on a case-by-case basis, if it can be demonstrated that a reasonable effort to sell the property at fair market value within the specified time frame has failed.

3. Reasonable effort to sell the property shall consist of:

- a. Listing the property with a real estate agent if the agent:
  1. Places a "For Sale" sign on the property which is clearly visible from the nearest public road; and
  2. Advertises the property in the local newspaper or on local television or radio stations; or
- b. A combination of at least two of the following actions:
  1. Advertising the property in the local newspaper or on local television or radio stations;
  2. Placing a "For Sale" sign on the property which is clearly visible from the nearest public road;
  3. Distributing fliers advertising the property for sale;
  4. Posting notices regarding availability of the property on community bulletin boards; or
  5. Showing the property to interested parties on a continuing basis.

(c) Proceeds from the sale of a home shall be excluded from consideration for three (3) months from the date of receipt if used to purchase another home.

(4) For an AFDC-related Medicaid case, \$1,000 in resources shall be excluded from consideration.

(5) A burial reserve of up to \$1,500 per individual, which may be in the form of a burial agreement, prepaid burial or similar arrangement, trust fund, life insurance policy, savings account, checking account, or other identifiable fund, shall be excluded from consideration.

(a) For an adult Medicaid case, the cash surrender value of life insurance shall be considered if determining the total value of burial reserves.

(b) If a burial fund is commingled with another fund, the applicant shall have thirty (30) days to separately identify the burial reserve amount.

(c) Interest or other appreciation of value of an excluded burial reserve or space shall be excluded as a resource if the amount is left to accumulate as a part of the burial reserve or space.

(6) A burial trust, burial space, plot, vault, crypt, mausoleum, urn, casket, or other repository which is customarily and traditionally used for the remains of a deceased person shall be excluded from consideration as a countable resource without regard to value.

(7) For a family-related or an AFDC-related Medicaid case, proceeds from the sale of a home shall be excluded from consid-

eration for six (6) months from the date of receipt if used to purchase another home.

(8) Resources of an individual who is blind or has a disability shall be excluded if the resources are included in an approved plan for achieving self-support (PASS).

(9) An individual development account up to a total of \$5,000, excluding interest accruing, shall be excluded from consideration as a resource for an AFDC-related Medicaid case.

(10) Disaster relief assistance shall be excluded from consideration.

(11) Cash or in-kind replacement for repair or replacement of an excluded resource shall be excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(12) A life interest that a Medicaid applicant or recipient has in real estate or other property shall be excluded from consideration as an available resource.

(13) Real property other than the homestead shall be excluded from consideration if:

- (a) The property is jointly owned and its sale would cause loss of housing for the other owner or owners;
- (b) Its sale is barred by a legal impediment; or
- (c) The owner's reasonable efforts to sell by informing the public of his intention to sell the property at fair market value have been unsuccessful.

(14) A cash payment intended specifically to enable an applicant or recipient to pay for a medical or social service shall not be considered as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it shall be considered a resource.

(15) An amount received which is a result of an underpayment or a retroactive payment of benefits from retirement, survivors, and disability insurance (RSDI) benefits or SSI shall be excluded as a resource for the first six (6) months following the month in which the amount is received.

(16) A federal Republic of Germany reparation payment shall not be considered as an available resource.

(17) An amount received from a victim's compensation fund established by a state to aid victims of crime shall be:

- (a) Completely excluded as a resource if the individual can show that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime; or
- (b) Excluded as a resource for nine (9) months if the individual can show that the amount was paid for pain and suffering.

(18) An Austrian social insurance payment based on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from resource consideration.

(19) An individual retirement account, Keogh plan, or other tax deferred asset shall be excluded as a resource until withdrawn.

(20) A payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded from consideration as an available resource.

(21) A payment received from a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded from consideration as an available resource.

(22) An annuity that is irrevocable and cannot be sold or transferred shall be excluded from consideration as a resource.

Section 4. Resource Exemptions. (1) A resource which is exempted from consideration for purposes of computing eligibility for the SSI Program shall be exempted from consideration by the department.

(2) For an AFDC-related or a family-related Medicaid case, all nonliquid resources shall be exempted.

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY: November 15, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502)



564-7905, fax (502) 564-7573.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Stuart Owen (502) 564-6204 or Lisa Lee (502) 564-6890

## (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to Medicaid eligibility resource standards.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to Medicaid eligibility resource standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to Medicaid eligibility resource standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to Medicaid eligibility resource standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation: This amendment results from a congressional initiative to encourage states to adopt the option of allowing individuals with disabilities to purchase Medicaid coverage that is necessary to enable such individuals to maintain employment. The initiative creates a new Medicaid eligibility group known as Medicaid works individuals. Currently, individuals receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) who choose to work, lose Medicaid health benefits because their income exceeds the allowable limit. This initiative will allow individuals with disabilities who choose to work and whose income is less than or equal to 250% of the federal poverty level the opportunity to purchase Medicaid coverage by paying a premium. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and reapply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The resource standards established in this administrative regulation for Medicaid works individuals exceed those established for other recipients and result from a review of other states' standards as well as feedback from the advocate community.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to extend Medicaid coverage to individuals with disabilities who work. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and reapply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The resource standards established in this administrative regulation for Medicaid works individuals exceed those established for other recipients and result from a review of other states' standards as well as feedback from the advocate community.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by ensuring that provisions

relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect individuals with disabilities between the ages of sixteen (16) and sixty-five (65) who choose to work and whose income is less than or equal to 250% of the federal poverty level.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Individuals choosing Medicaid coverage via this option must pay a monthly premium in order to receive benefits under this program. In addition, recipients must pay nominal copayments for specified services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Members eligible via the Medicaid works option will be subject to pharmacy and medical copayments that are capped at \$225 each per year per recipient. Therefore, recipients the maximum amount of copayments per recipient will be \$450 per year. In addition, recipients will be responsible for a monthly premium based on income levels. Premiums range from thirty-five (35) dollars to fifty-five (55) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals eligible via the Medicaid works option will receive pharmacy and medical benefits through the Medicaid program. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and reapply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The resource standards established in this administrative regulation for Medicaid works individuals exceed those established for other recipients and result from a review of other states' standards as well as feedback from the advocate community.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the system modifications will cost \$36,275.

(b) On a continuing basis: DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year; however, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. Additionally, DMS anticipates that sixty-five (65) percent of recipients expected to enroll for coverage via the Medicaid works option will already be enrolled in another Medicaid Program. Considering all factors, DMS projects total annual costs to be \$211,200, of which \$147,840 would be federal funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act, matching funds from general fund appropriations, and monthly premium payments made by recipients participating in the program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding will be necessary as DMS anticipates any increased cost will be absorbed within the existing Medicaid budget.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes monthly premium fees for recipients eligible via the Medicaid works option.



(9) Tiering: Is tiering applied? Tiering is applied to monthly premium amounts. The monthly premium is based on income brackets in order to make the program affordable to individuals in the lower income brackets. Recipients whose monthly income is below 100% of the federal poverty level will pay no premium while recipients above this level will vary with each increase of fifty (50) percent or more.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

The Centers for Medicare and Medicaid Services (CMS) does not mandate that state Medicaid programs cover working individuals who are disabled; however, relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B) and Public Law 106-170.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. CMS does not mandate that state Medicaid programs cover working individuals who are disabled; however, relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f) and 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170 Provisions established in this administrative regulation conform to the federal requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, than federal, requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, than federal, requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect an organization that chooses to hire an individual with a disability.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f) and 42 U.S.C. d(q)(2)(B), and Pub.L. 106-170. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for subsequent years? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that the Medicaid Management Information System (MMIS) modifications associated with this initiative will cost approximately \$36,275.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the enhanced coverage may result in additional cost; however, the measures are necessary to enhance access to health services. DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year. However, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. In addition, research shows that sixty-five (65) percent of individuals expected to participate in this option were already enrolled in another Medicaid program. DMS anticipates offsets in premiums and, due to the fact that approximately sixty-five (65) percent of recipients in this program would move from another Medicaid program, total annual costs are expected to be \$211,200, of which \$147,840 would be federal funds.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY 907 KAR 1:900E

This emergency administrative regulation is being promulgated to amend Medicaid eligibility in order to allow individuals to work and maintain, rather than forfeit, Medicaid eligibility. It is amended in conjunction with four (4) other administrative regulations accomplishing the same goal: 907 KAR 1.011, Technical eligibility requirements; 907 KAR 1:604, Recipient cost sharing; 907 KAR 1:640, Income standards for Medicaid; and 907 KAR 1:645, Resource standards for Medicaid. This action must be taken on an emergency basis to protect the health, safety, and welfare of recipients by ensuring access to necessary care. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor

MARK D. BIRDWHISTELL, Secretary

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Administration and Financial Management (Emergency Amendment)

#### 907 KAR 1:900E. KyHealth Choices benefit plans.

RELATES TO: KRS 205.520, 205.560, 205.6312, 205.6481-6497, 205.8451, 319A.010, 327.010, 334A.020, 20 C.F.R. 416.2001, 42 C.F.R. 433.56, 435, 436.3, 440.30, 440.40, 440.60, 440.70, 440.110, 440.120, 440.130, 440.170, 441.20, 441.21, 441.35, 441.40, 457.310, 45 C.F.R. 233.100, 42 U.S.C. 416, 423, 1382c, 1383c, 1396a, b, c, d, o, r-6, r-8, 1396a(10)(A), 1396a(a)(52), 1396a(aa), 1396a(l)(1)(B), (C), (D), 1396d(a)(4)(C), 1396d(o), 1396u-1, 1397aa,

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), Pub. L. 106-170, 109-171

EFFECTIVE DATE: November 20 2007

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet

for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the Medicaid Program KyHealth Choices benefit plans.

Section 1. Definitions. (1) "Benchmark plan" means the Global Choices.

(2) "Benefit plan" means the health plan provided to recipients under comprehensive choices, family choices, global choices, and optimum choices.

(3) "Caretaker relative" means a relative:

(a) With whom a child is, or shall be, placed by the Cabinet for Health and Family Services; and

(b) Who is seeking to qualify as a kinship caregiver.

(4) "Comprehensive choices" means a benefit plan for an individual who:

(a) Meets the nursing facility patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. A nursing facility in accordance with 907 KAR 1:022;

2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090;

3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160; or

4. The Model Waiver II Program in accordance with 907 KAR 1:595; and

(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R.

(5)

"Department" means the Department for Medicaid Services or its designee.

(6) "Family choices" means a benefit plan for an individual who:

(a) Is covered pursuant to:

1. 42 U.S.C. 1396a(a)(10)(i)(I) and 1396u-1;

2. 42 U.S.C. 1396a(a)(52) and 1396r-6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);

3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);

4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C);

5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or

6. 42 C.F.R. 457.310; and

(b) Has a designated package code of 2, 3, 4, or 5.

(7) "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:

(a) Caretaker relatives who:

1. Receive K-TAP and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. Receive SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(c) Blind individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(d) Disabled individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(f) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022;

(g) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022; [or]

(h) Pregnant women; or

(i) Medicaid works individuals.

(8) "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the Cabinet for Health and Family Services as an alternative to foster care.

(9) "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

(10) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(g)(2)(B) would be considered to be receiving supplemental security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets income standards established in 907 KAR 1:640, Income standards for Medicaid; and

(e) Meets resource standards established in 907 KAR 1:645, Resource standards for Medicaid.

(11) "Model Waiver II" means a department program established in 907 KAR 1:595.

(12)-(14) "Optimum choices" means a benefit plan for an individual who:

(a) Meets the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1:022; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and

(c) Has a designated package code of S, T, U, V, W, X, Z, O, or 1.

(13)-(12) "Package code" means a unique code which identifies a specific service under each benefit plan.

(14)-(13) "Recipient" is defined in KRS 205.8451 and applies to an individual who has been determined eligible to receive benefits under the state's Title XIX or Title XXI Program in accordance with 907 KAR Chapters 1 through 4

(15)-(14) "SSI" means the Social Security Administration program called supplemental security income.

(16)-(15) "SSP" means state supplemental payments for individuals who are aged, blind or disabled and in accordance with 921 KAR 2:015.

Section 2. Benefit Plan Assignment. (1)(a) The department shall assign each recipient, including those excluded from mandatory participation pursuant to 42 U.S.C. 1396u-7(a)(2)(B), to an appropriate benefit package. The four (4) benefit plans shall include: comprehensive choices, family choices, global choices, or

optimum choices - pursuant to the definitions established in Section 1(4), (6), (7), and (11); and based on the recipient's medical needs or circumstances.

(b) An individual excluded from mandatory participation pursuant to 42 U.S.C. 1396u-7(a)(2)(B)

1. May enroll in the benchmark plan; and

2. Shall be subject to the cost-sharing, service limit, and any other provisions established for the benchmark plan effective beginning with the date the individual requested to be enrolled in the benchmark plan.

(2) If a recipient's medical needs or circumstances evolve to the extent another benefit plan is more appropriate change, the department shall assign the recipient to the more appropriate benefit plan.

(3)(a) A recipient whose medical needs or circumstances are appropriate for the comprehensive or optimum choices benefit plan may elect to not be assigned to the comprehensive or optimum choices benefit plan.

(b) The department shall assign a recipient who elects to not be assigned to the comprehensive or optimum choices benefit plan to the global choices benefit plan, unless the individual elects to opt out of all coverage.

(4)(a) A recipient may request to be assigned to a different benefit plan by notifying the department.

(b) If a recipient requests to be assigned to a different benefit plan, the department shall examine the recipient's medical needs or circumstances and determine the appropriateness of placing the individual shall be placed in a different benefit plan.

#### Section 3. Benefit Plan Covered Services and Cost Sharing.

(1) Benefit plan covered service provisions shall be as established in the respective program administrative regulations located in Title 907 KAR.

(2) Benefit plan cost-sharing provisions shall be as established in 907 KAR 1 604, Recipient cost-sharing.

#### Section 4. Appeals. A recipient may appeal a department decision in accordance with 907 KAR 1 563, Medicaid covered services hearing and appeals.

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 15, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-6204 or Lisa Lee (502) 564-6890

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to KyHealth Choices benefit plans.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to KyHealth Choices benefit plans.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to KyHealth Choices benefit plans.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to KyHealth Choices benefit plans.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment results from a congressional initiative to encourage states to adopt the option of allowing individuals with disabilities to purchase Medicaid coverage that is necessary to

enable such individuals to maintain employment. The initiative creates a new Medicaid eligibility group known as Medicaid works individuals. Currently, individuals receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) who choose to work, lose Medicaid health benefits because their income exceeds the allowable limit. This initiative will allow individuals with disabilities who choose to work and whose income is less than or equal to 250% of the federal poverty level the opportunity to purchase Medicaid coverage by paying a premium. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to extend Medicaid coverage to individuals with disabilities who work. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 1396a(a)(10), 42 1396b(f), 42 1396d(q)(2)(B), and Pub L. 106-170.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 1396a(a)(10), 42 1396b(f), 42 1396d(q)(2)(B) and Pub.L. 106-170.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect individuals with disabilities between the ages of sixteen (16) and sixty-five (65) who choose to work and whose income is less than or equal to 250% of the federal poverty level.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Individuals choosing Medicaid coverage via this option must pay a monthly premium in order to receive benefits under this program. In addition, recipients must pay nominal co-payments for specified services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Members eligible via the Medicaid works option will be subject to pharmacy and medical co-payments that are capped at \$225 each per year per recipient. Therefore, recipients the maximum amount of co-payments per recipient will be \$450 per year. In addition, recipients will be responsible for a monthly premium based on income levels. Premiums range from thirty-five (35) dollars to fifty-five (55) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals eligible via the Medicaid works option will receive pharmacy and medical benefits through the Medicaid program. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered

via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the system modifications will cost \$36,275.

(b) On a continuing basis: DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year; however, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. Additionally, DMS anticipates that sixty-five (65) percent of recipients expected to enroll for coverage via the Medicaid works option will already be enrolled in another Medicaid program. Considering all factors, DMS projects total annual costs to be \$211,200, of which \$147,840 would be federal funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act, matching funds from general fund appropriations, and monthly premium payments made by recipients participating in the program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding will be necessary as DMS anticipates any increased cost will be absorbed within the existing Medicaid budget.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes monthly premium fees for recipients eligible via the Medicaid works option.

(9) Tiering: Is tiering applied? Tiering is applied to monthly premium amounts. The monthly premium is based on income brackets in order to make the program affordable to individuals in the lower income brackets. Recipients whose monthly income is below 100% of the federal poverty level will pay no premium while recipients above this level will vary with each increase of fifty (50) percent or more.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Centers for Medicare and Medicaid Services (CMS) does not mandate that state Medicaid programs cover working individuals who are disabled, however, relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 1396a(a)(10), 1396b(f), 1396d(q)(2)(B) and Pub.L. 106-170.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. CMS does not mandate that state Medicaid programs cover working individuals who are disabled; however, relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 1396a(a)(10), 1396b(f) and 1396d(q)(2)(B) and Pub L. 106-170. Provisions established in this administrative regulation conform to the federal requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, than federal, requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, than federal, requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect an organization that chooses to hire an individual with a disability.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 1396a(a)(10), 42 1396b(f) and 42 d(q)(2)(B), and Pub.L. 106-170. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that the Medicaid Management Information System (MMIS) modifications associated with this initiative will cost approximately \$36,275.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the enhanced coverage may result in additional cost; however, the measures are necessary to enhance access to health services. DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year. However, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. In addition, research shows that sixty-five (65) percent of individuals expected to participate in this option were already enrolled in another Medicaid program. DMS anticipates offsets in premiums and, due to the fact that approximately sixty-five (65) percent of recipients in this program would move from another Medicaid program, total annual costs are expected to be \$211,200, of which \$147,840 would be federal funds.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY 921 KAR 2:015E

This emergency administrative regulation is necessary to change the standards for all levels of care for the State Supplemental Program due to the federal and states agreements to

pass through the Supplemental Security Income 2008 cost of living adjustment, an increase of two and three-tenths (2.3) percent. This administrative regulation is needed to comply with the agreement the Commonwealth of Kentucky has with the U.S. Department of Health and Human Services to pass along any cost of living adjustments in Supplemental Security Income benefits to State Supplemental Program recipients. Failure to comply with this agreement jeopardizes the state's Medicaid funds pursuant to 20 C.F.R. 416.2099. The Social Security Administration notified the Department for Community Based Services of the amount of the Supplemental Security Income cost of living adjustment in October 2007. An ordinary administrative regulation would not allow the agency sufficient time to have an administrative regulation in place in order to revise the payment standards effective January 1, 2008. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor  
TOM EMBERTON, JR., Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Family Support**  
**(Emergency Amendment)**

**921 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.**

RELATES TO: KRS 209.020(4), 216.557(1), 216.750(2), 216B.010-216B.131, Chapter 514, 20 C.F.R. 416.120, 416.212, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1383

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

EFFECTIVE: December 7, 2007

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement with the U.S. Department of Health and Human Services Commissioner in effect, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020(4).

(2) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind or had a disability.

(3) "Department" means the Department for Community Based Services or its designee.

(4) "Elder Shelter Network" means a temporary shelter for a victim of elder abuse.

(5) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(6) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 921 KAR 2.006.

(7) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Mental Health and Mental Retardation Services to employ a mental

health professional who has specialized training in the care of a resident with mental illness or mental retardation.

(8) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

(b) 1. The total of the SSI payment; or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 8 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 6, 7, and 8 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 1:011, Sections 1(5), 5(5), (6), (7), (13), 10, and 11;

(b) 907 KAR 1:640, Sections 1(1), (6), (7), (10), 3(4);

(c) 907 KAR 1:645;

(d) 907 KAR 1:650, Section 1(7); and

(e) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2.035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2.050 for an eligible individual who:

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 8 of this administrative regulation; and

(c) 1. Resides in a personal care home and is sixteen (16) years of age or older in accordance with 902 KAR 20:036, Section 3(3)(a);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14); or

3. Receives caretaker services and is at least eighteen (18) years of age.

(2) A full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in 902 KAR 20:036, and

2. Is licensed under KRS 216B.010 to 216B.131;

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) A situation in which a caretaker is required to be hired to provide care other than room and board.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation; or

b. Residence; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department office within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of

1. Discharge to a

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

1. Death or discharge of the state supplementation recipient, or

2. Voluntary relinquishment of a license to the Office of Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2 of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) A service by a caretaker shall be made to enable an adult to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) A service by a caretaker shall be made at regular intervals

by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

(a) Often the service is provided,

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

(a) Client is taken daily or periodically to the home of the caretaker; or

(b) Caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult or minor child who has a disability; or

3. Adult child of a parent who is aged, blind or has a disability.

Section 6. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (10), and 3(4);

(b) 907 KAR 1:645;

(c) 907 KAR 1:650, Section 1(7); and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4)

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

(a) \$2000 for individual; or

(b) \$3000 for couple.

Section 7. Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (10), and 3(4);

(b) 907 KAR 1:645;

(c) 907 KAR 1:650, Section 1(7); and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) The optional supplementation payment shall be determined by:

(a) Adding:

1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and

2. A payment made to a third party on behalf of an applicant or recipient; and

(b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 8 of this administrative regulation.

(3) Income of an ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. Himself; and

2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollars general exclusion shall not be an allowable deduction from income.

(9)(a) For a resident in the Elder Shelter Network Program, income and resources of the spouse shall be disregarded for the month of separation.

(b) A third-party payment on behalf of an applicant or recipient made by the Elder Shelter Network Program shall be disregarded for ninety (90) days from the date of admission.

Section 8. Standard of Need. (1) To the extent funds are available, the standard shall be based on the living arrangement of an eligibility determination as follows:

(a) A resident of a personal care home made on or after January 1, 2008, \$1,157[2007, \$1,143];

(b) A resident of a family care home made on or after January 1, 2008, \$809[2007, \$795]; or

(c) Caretaker:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made on or after January 1, 2008, \$699[2007, \$685];

2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 2008,



\$1,017[2007, \$1,003]; or

3. An eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 2008, \$1,071[2007, \$1,049].

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollars personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance that shall be retained by the client.

**Section 9. Temporary Stay in a Medical Facility** (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary; and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if.

(a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;

(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and

(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission, and

2. The physician statement specified in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following health care facilities:

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge

**Section 10. Citizenship requirements.** An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified alien.

**Section 11. Requirement for Residency.** An applicant or recipient shall reside in Kentucky.

**Section 12. Persons with Mental Illness or Mental Retardation Supplement.** (1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem:

1. For a state supplementation recipient in the personal care home's care; and

2. As of the first calendar day of a qualifying month;

(b) Shall not be eligible for a payment for a Type A Citation that is not corrected; and

(c) Shall meet the following certification criteria for eligibility to participate in the Mental Illness or Mental Retardation Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;

2. Care for a thirty-five (35) percent mental illness or mental retardation population in all of its occupied licensed personal care home beds who have a:

a. Primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of Inspector General in accordance with Section 14(2) through (4) of this administrative regulation; and

6. File an "STS-1, Mental Illness/Mental Retardation (MIMR) Supplement Program Application for Benefits", Application for Mental Illness or Mental Retardation Supplement Program Benefits" with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July and October.

b. Unless mental illness or mental retardation supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall mail an "STS-2, Notice of Decision to Personal Care Home" to a personal care home following:

(a) Receipt of verification from the Office of Inspector General as specified in Section 14(6) of this administrative regulation, and

(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with an "STS-3, Mental Illness/Mental Retardation (MIMR) Supplement Program Monthly Report Form" that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the resident's Social Security number, and

3. Annotates the form, in order to maintain confidentiality, as follows with a:

a. Star indicating a resident has a mental illness or mental retardation diagnosis;

b. Check mark indicating a resident receives state supplementation; and

c. Star and a check mark indicating the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation; and

(b) Mail the STS-3 to the department postmarked by the fifth working day of the month.

(5) The monthly report shall be used by the department for:

(a) Verification as specified in subsection (4)(a) of this section;

(b) Payment, and

(c) Audit purposes

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

**Section 13. Mental Illness or Mental Retardation Basic Training.** (1)(a) A personal care home's licensed nurse, or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health and Mental Retardation Services.

(b) Other staff may attend the basic training workshop in order



to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

- (a) Importance of proper medication administration;
- (b) Side effects and adverse medication reactions with special attention to psychotropics;
- (c) Signs and symptoms of an acute onset of a psychiatric episode;
- (d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or mental retardation;
- (e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation; and
- (f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall:

- (a) Include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator; and
- (b) Be in the quarter during which the STS-1 is filed with the department.

(4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and four (4) other staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.

(b) A personal care home shall have on staff a licensed nurse or individual who:

- 1. Has successfully completed certified medication technician training; and
- 2.a. Has received mental illness or mental retardation basic training; or
- b. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Mental Health and Mental Retardation Services may provide advanced level training for a personal care home.

(a) Advanced level training shall be provided through a one (1) day workshop.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or mental retardation.

(d) Attendance of an advanced level training workshop shall be optional.

(6) The Department for Mental Health and Mental Retardation Services shall provide within five (5) working days a:

- (a) Certificate to direct care staff who complete the workshop; and
- (b) Listing to the department of staff who completed the training workshop.

(7) Unless staff turnover occurs as specified in subsection (4)(a) of this section, the department shall pay twenty-five (25) dollars to a personal care home:

- (a) Who has applied for the Persons with Mental Illness or Mental Retardation Supplement Program; and
  - (b) For each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year.
- (8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 14. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program.

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey:

1. May be separate from an inspection in accordance with KRS 216.530; and

2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2 of this subsection.

(c) The department shall notify the Office of Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria are met:

1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of basic training, as specified in Section 13(1) through (4) of this administrative regulation;

2. The personal care home:

a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop; and

b. Maintains documentation of attendance at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training:

a. Demonstrates a knowledge of psychotropic drug side effects; and

b. Is on duty as specified in Section 12(1)(c)3 of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall also be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey process.

(4) If thirty-five (35) percent mental illness or mental retardation population, as specified in Section 12(1)(c)2 of this administrative regulation, is met on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification as specified in subsection (1)(c) of this section

(5) If the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 12(6)(a) of this administrative regulation.

(6) The Office of Inspector General shall provide the department with a completed "STS-4, Mental Illness or Mental Retardation Supplement Certification Survey" within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

(7) The Office of Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department:

(a) Monthly; and

(b) By the fifth working day of each month for the prior month

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of Inspector General, established in 921 KAR 2 050.

(9) If a criterion for certification is not met, the department shall mail an STS-2 to a personal care home following receipt of the survey by the Office of Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the requested information on the STS-2:

(a) Relevant to unmet certification criteria specified on the STS-4, and

(b) Within ten (10) working days after the STS-2 is mailed.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2.046.

(12) If a personal care home is discontinued from the Mental Illness or Mental Retardation Supplement Program, the personal care home may reapply for certification, as specified in Section 12(1)(c)6 of this administrative regulation, for the next following quarter.

**Section 15 Hearings and Appeals.** An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

**Section 16. Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) "STS-1, Mental Illness/Mental Retardation (MI/MR) Supplement Program Application for Benefits", edition 1/07;

(b) "STS-2, Notice of Decision to Personal Care Home", edition 1/07;

(c) "STS-3, Mental Illness/Mental Retardation (MI/MR) Supplement Program Monthly Report Form", edition 1/07; and

(d) "STS-4, Mental Illness or Mentally Retardation Supplement Certification Survey", edition 1/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK A. WASHINGTON, Commissioner

TOM EMBERTON, JR., Secretary

APPROVED BY AGENCY: December 6, 2007

FILED WITH LRC: December 7, 2007 at 10 a.m.

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a program for supplemental payments to persons requiring care in a personal care or family care home or receiving caretaker services in accordance with KRS 205.245.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the Persons with Mental Illness or Mental Retardation Supplement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 205.245 by complying with an agreement with the U.S. Department of Health and Human Services to pass along any Supplemental Security Income benefit increases to State Supplementation recipients. This administrative regulation also conforms to KRS 194A.050(1) which requires the Secretary to adopt administrative regulations necessary under applicable state laws to operate programs and fulfill responsibilities vested in the Cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes eligibility requirements and payment standards for the State Supplementation Program for personal care, family care and caretaker services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of

(a) How the amendment will change this existing administrative regulation: This administrative regulation is necessary to change

the standards for all levels of care for the State Supplementation Program due to the federal and state's agreement to pass through the Supplemental Security Income 2008 cost of living adjustment (COLA), an increase of 2.3%.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is needed to comply with the agreement the Commonwealth of Kentucky has with the U.S. Department of Health and Human Services to pass along any cost of living adjustments in Supplemental Security Income benefits to State Supplementation Program recipients. Failure to comply with this agreement jeopardizes the state's Medicaid funds pursuant to 20 C.F.R. 416.2099. The Social Security Administration notified the Department for Community Based Services of the amount of the Supplemental Security Income cost of living adjustment in October 2007.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 205.245 by complying with an agreement between Kentucky and the U.S. Department of Health and Human Services to pass along any Supplemental Security Income benefit increases to State Supplementation recipients.

(d) How the amendment will assist in the effective administration of the statutes: This amendment passes along the 2008 cost of living adjustment for the Supplemental Security Income benefit, a 2.3% increase, by modifying the standard of payments for all levels of care for the State Supplementation Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of October 2007, there are 4,298 state supplementation recipients.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The State Supplementation payment to a Personal Care Home is \$1,157 minus the personal care allowance of \$60 to the State Supplementation recipient. The payment to a Family Care Home is \$809 minus the personal care allowance of \$40 to the recipient. The payment to a caretaker of a single person is \$699. The payment to a caretaker of a couple, one requiring care, is \$1017. The payment to a caretaker of a couple, both requiring care, is \$1071.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The recipients of the State Supplementation payment will receive a 2.3% cost of living adjustment.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially. There will be a cost of \$224,900 for the first year to the Cabinet for Health and Family Services to implement the mandated pass along of the 2008 SSI cost of living adjustment. The COLA was included in the enacted budget.

(b) On a continuing basis: There will be a cost of \$449,800 to the Cabinet for Health and Family Services on a continuing basis to implement the mandated pass along of the 2008 SSI cost of living adjustment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds/Agency Funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no fees in this administrative regulation

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish any fees, and it does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, as the application of this administrative regulation will be applied in a like

manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the Federal mandate. 42 U.S.C. 1382 e-g
2. State compliance standards. KRS 194A.050(1), 205.245
3. Minimum or uniform standards contained in the Federal mandate. The provisions of the administrative regulation comply with the Federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the Federal mandate. This administrative regulation will impose no stricter requirements or additional or different responsibilities or requirements.
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This administrative regulation will impose no stricter requirements or additional or different responsibilities or requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.245, 42 U.S.C. 1382 e-g
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The State Supplementation Program has been operational for many years and does not generate any revenue. This amendment will not generate additional revenue in the first year.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The State Supplementation Program has been operational for many years and does not generate any revenue. This amendment will not generate additional revenue in subsequent years.
  - (c) How much will it cost to administer this program for the first year? It will cost \$224,900 to administer this program for the current fiscal year. This amount was included in the enacted budget.
  - (d) How much will it cost to administer this program for subsequent years? The annual cost to administer this program is \$449,800. This amount was included in the enacted budget.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

EDUCATION PROFESSIONAL STANDARDS BOARD  
(As Amended at ARRS, December 10, 2007)

16 KAR 1:010. Standards for certified school personnel.

RELATES TO KRS 161.020, 161.028(1)(a), 161.030,  
161.048(1)(d), 161.095, 161.120

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a),  
161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS  
161.028(1)(a) requires the Education Professional Standards  
Board establish standards for obtaining and maintaining a teaching  
certificate. This administrative regulation establishes the standards  
required for certified school personnel to obtain or maintain certi-  
fication.

Section 1. Kentucky [Successful completion of the standards  
established in Section 2 of this administrative regulation shall be  
indicated using the criteria established in:

- (1) New Teacher Standards for Preparation and Certification;  
or
- (2) Experienced Teacher Standards for Preparation and Cer-  
tification.

Section 2. New Teacher Standards for Preparation and Cer-  
tification. The standards established in this section [follow-  
ing][new teacher][standards] (established in this section) shall be  
used in the evaluation and assessment of a teacher for initial  
or[and] advanced certification and for the accreditation of teacher  
preparation programs[, which shall be designed to:]-

(1) Standard 1. The teacher demonstrates applied content  
knowledge [-] The teacher demonstrates a current and sufficient  
academic knowledge of certified content areas to develop student  
knowledge and performance in those areas.

(2) Standard 2. The teacher designs and plans instruction [-]  
The teacher designs and[/-] plans instruction that develops student  
abilities to use communication skills, apply core concepts, become  
self-sufficient individuals, become responsible team members,  
think and solve problems, and integrate knowledge.

(3) Standard 3. The teacher creates and maintains learning  
climate [-] The teacher creates a learning climate that supports the  
development of student abilities to use communication skills, apply  
core concepts, become self-sufficient individuals, become respon-  
sible team members, think and solve problems, and integrate  
knowledge.

(4) Standard 4. The teacher implements and manages instruc-  
tion [-] The teacher introduces, implements, and manages [in-  
troduces/implements/manages] instruction that develops student  
abilities to use communication skills, apply core concepts, become  
self-sufficient individuals, become responsible team members,  
think and solve problems, and integrate knowledge.

(5) Standard 5. The teacher assesses and communicates  
learning results [-] The teacher assesses learning and communi-  
cates results to students and others with respect to student abilities  
to use communication skills, apply core concepts, become self-  
sufficient individuals, become responsible team members, think  
and solve problems, and integrate knowledge.

(6) Standard 6. The teacher demonstrates the implementation  
of technology [-] The teacher uses technology to support instruc-  
tion; access and manipulate data, enhance professional growth  
and productivity; communicate and collaborate with colleagues,  
parents, and the community; and conduct research.

(7) Standard 7. The teacher reflects on and evaluates teach-  
ing and learning [-] The teacher reflects on and evaluates specific  
teaching or[/-] learning situations or [and/or] programs.

(8) Standard 8. The teacher collaborates with colleagues,

parents, and others. [Colleagues/Parents/Others] [-] The teacher  
collaborates with colleagues, parents, and other agencies to de-  
sign, implement, and support learning programs that develop stu-  
dent abilities to use communication skills, apply core concepts,  
become self-sufficient individuals, become responsible team mem-  
bers, think and solve problems, and integrate knowledge.

(9) Standard 9. The teacher evaluates teaching and imple-  
ments professional development [-] The teacher evaluates his or  
her [his/her] overall performance with respect to modeling and  
teaching Kentucky's learning goals, refines the skills and proc-  
esses necessary, and implements a professional development  
plan.

(10) Standard 10. The teacher provides leadership within  
the school, community, and profession  
[school/community/profession] [-] The teacher provides profes-  
sional leadership within the school, community, and education  
profession to improve student learning and well-being. [(1) Address  
the student academic expectations as provided by 703 KAR 4:060,

(2) Meet the content standards provided by 16 KAR 5:010;

(3) Prepare a candidate to teach children, including a child  
from a culturally diverse background; and

(4) Manage tasks identified in the new teacher performance  
standards.

(a) New Teacher Standard I, designs and plans instruction.  
The teacher designs and plans instruction and learning climates  
that develop student abilities to use communication skills, apply  
core concepts, become self-sufficient individuals, become respon-  
sible team members, think and solve problems, and integrate  
knowledge.

(b) New Teacher Standard II, creates and maintains learning  
climates. The teacher creates a learning climate that supports the  
development of student abilities to use communication skills, apply  
core concepts, become self-sufficient individuals, become respon-  
sible team members, think and solve problems, and integrate  
knowledge.

(c) New Teacher Standard III, implements and manages in-  
struction. The teacher introduces, implements, and manages in-  
struction that develops student abilities to use communication  
skills, apply core concepts, become self-sufficient individuals, be-  
come responsible team members, think and solve problems, and  
integrate knowledge.

(d) New Teacher Standard IV, assesses and communicates  
learning results. The teacher assesses learning and communicates  
results to students and others with respect to student abilities to  
use communication skills, apply core concepts, become self-  
sufficient individuals, become responsible team members, think  
and solve problems, and integrate knowledge.

(e) New Teacher Standard V, reflects and evaluates teaching  
and learning. The teacher reflects on and evaluates specific teach-  
ing and learning situations and programs.

(f) New Teacher Standard VI, collaborates with colleagues,  
parents, and others. The teacher collaborates with colleagues,  
parents, and other community agencies to design, implement, and  
support learning programs that develop student abilities to use  
communication skills, apply core concepts, become self-sufficient  
individuals, become responsible team members, think and solve  
problems, and integrate knowledge.

(g) New Teacher Standard VII, engages in professional devel-  
opment. The teacher evaluates his overall performance with re-  
spect to modeling and teaching Kentucky's learning goals estab-  
lished in KRS 158.6451, refines the skills and processes neces-  
sary, and implements a professional development plan.

(h) New Teacher Standard VIII, content knowledge. The  
teacher demonstrates a current and sufficient academic knowledge  
of certified content areas to develop student knowledge and per-  
formance in those areas; and

(i) ~~New Teacher Standard IX, demonstrates implementation of technology. The teacher uses technology to support instruction; access and manipulate data; enhance professional growth and productivity; communicate and collaborate with colleagues, parents, and the community; and conduct research.~~

**Section 3. Experienced Teacher Standards for Preparation and Certification.** The experienced teacher standards established in this section shall be used in the accreditation of teacher preparation programs and in the evaluation and assessment of a teacher for certification purposes, other than for a plan in a professional education specialty for which the Education Professional Standards Board has established specific standards in KAR Title 16.

(1) ~~Experienced Teacher Standard I, demonstrates professional leadership. The teacher provides professional leadership within the school, community, and education profession to improve student learning and well-being;~~

(2) ~~Experienced Teacher Standard II, demonstrates knowledge of content. The teacher demonstrates content knowledge within own area of certification and application to other areas, content areas, and certification areas;~~

(3) ~~Experienced Teacher Standard III, designs and plans instruction. The teacher designs and plans instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;~~

(4) ~~Experienced Teacher Standard IV, creates and maintains learning climate. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;~~

(5) ~~Experienced Teacher Standard V, implements and manages instruction. The teacher introduces, implements, and manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;~~

(6) ~~Experienced Teacher Standard VI, assesses and communicates learning results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;~~

(7) ~~Experienced Teacher Standard VII, reflects and evaluates teaching and learning. The teacher reflects on and evaluates teaching and learning;~~

(8) ~~Experienced Teacher Standard VIII, collaborates with colleagues, parents, and others. The teacher collaborates with colleagues, parents, and other agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;~~

(9) ~~Experienced Teacher Standard IX, engages in professional development. The teacher evaluates own overall performance in relation to Kentucky's learner goals as established in KRS 158.6451 and implements a professional development plan, and~~

(10) ~~Experienced Teacher Standard X, demonstrates implementation of technology. The teacher uses technology to support instruction; access and manipulate data; enhance professional growth and productivity; communicate and collaborate with colleagues, parents, and the community; and conduct research.~~

**Section 4. Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) New Teacher Standards for Preparation and Certification, November 1994, and

(b) Experienced Teacher Standards for Preparation and Certification, June 1994.

(2) This material may be inspected, copied, or obtained at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601.]

TOM STULL, Chairperson

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

## EDUCATION PROFESSIONAL STANDARDS BOARD (As Amended at ARRS, December 10, 2007)

### 16 KAR 2:010. Kentucky teaching certificates.

RELATES TO: KRS 158.6451, 161.020, 161.028(1), 161.030  
STATUTORY AUTHORITY: KRS 161.028(1)(a), (b), (f), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the board to set standards for programs for the preparation of teachers and other professional school personnel. KRS 161.028(1)(f) requires the board to issue and renew any certificate. This administrative regulation establishes the Kentucky certification to be issued for teaching positions

**Section 1. Definitions.** (1) "Approved program of preparation" means a program which has been approved by the Education Professional Standards Board under 16 KAR 5.010 for a specific certification or which has been approved for certification by the state education agency of another state.

(2) "Assessments" means the tests of knowledge and skills authorized by KRS 161.030 and established in 16 KAR 6.010.

(3) "Base certificate" means a stand-alone license to teach which encompasses authorization to teach introductory and interdisciplinary courses in related fields.

(4) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030 and established in 16 KAR 7.010.

(5) "Certificate endorsement" means an addition to a base or restricted base certificate, which is limited in scope and awarded on the basis of completion of an endorsement program or a combination of educational requirements, assessments and experience as outlined in Section 5 of this administrative regulation.

(6) "Certificate extension" means an additional base or restricted base certificate in a content area or grade range.

(7) "Kentucky teacher standards" ["Experienced teacher standards"] means the standards established in 16 KAR 1.010 that identify what a Kentucky [an effective-experienced] teacher shall know and be able to do.

(8) "Major" means an academic area of concentration consisting of at least thirty (30) hours of coursework. ["New teacher standards" means the standards established in 16 KAR 1.010 that identify what a new teacher shall know and be able to do.]

(9) "Professional teaching certificate" means the document issued to:

(a) An individual upon successful completion of the beginning teacher internship; or

(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.

(10) "Provisional teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.

(11) "Restricted base certificate" means a stand-alone license to teach in a specific subject area of certification which is the only subject area that can be taught under this limited certificate.

(12) "Statement of eligibility" means the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments.

**Section 2 Certificate Issuance.** (1) A statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has successfully completed

(a)1. At least a bachelor's degree with:

- a. A cumulative grade point average of 2.50 on a 4.0 scale; or
- b. A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or

2. As required by Section 4(2)(g)6 or [and] (4)(e) of this administrative regulation, a master's degree with:

- a. A cumulative grade point average of 2.50 on a 4.0 scale; or
- b. A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

(b) An approved program of preparation; and

(c) The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

Section 3. Professional Teaching Certificate Renewal. (1) The renewal shall require completion of a fifth-year program of preparation which is consistent with:

(a) The Kentucky [experienced] teacher standards established in 16 KAR 1:010; or

(b) The standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation in KAR Title 16.

(2) The first five (5) year renewal shall require:

(a) Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year program established in 16 KAR 8.020 by September 1 of the year of expiration of the certificate; or

(b) Completion of the professional development plan and a partial portfolio for the continuing education option established in 16 KAR 8.030.

(3) The second five (5) year renewal shall require:

(a) Completion of the fifth-year program established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

(b) Completion of the professional development plan and a full portfolio for the continuing education option established in 16 KAR 8.030.

(4) Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 16 KAR 4.060.

Section 4. Grade Levels and Specializations. (1) Preparation for a teaching certificate shall be based on:

(a) The Kentucky [new] teacher standards established in 16 KAR 1:010;

(b) The accreditation and program approval standards established in 16 KAR 5:010, including the content standards of the relevant national specialty program associations; and

(c) The goals for the schools of the Commonwealth specified in KRS 158.6451 and the student academic expectations established in 703 KAR 4.060.

(2) A base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Interdisciplinary early childhood education, birth to primary, established in 16 KAR 2.040;

(b) Elementary school: primary through grade five (5) to include preparation in the academic disciplines taught in the elementary school.

1. The elementary certificate shall be valid for teaching grade six (6) if grade six (6) is taught in a self-contained classroom or in a school organization in which grade six (6) is housed with grade (5) in the same building.

2. A candidate for the elementary certificate may simultaneously prepare for certification for teaching exceptional children.

(c) 1. Middle school option 1: grades five (5) through nine (9) with the equivalent of one (1) major to be selected from:

- a. English and communications;
- b. Mathematics;
- c. Science; or
- d. Social studies;

2. Middle school option 2: grades five (5) through nine (9) with two (2) middle school teaching fields to be selected from:

- a. English and communications;
- b. Mathematics;
- c. Science; or
- d. Social studies;

3. A candidate who chooses to simultaneously prepare for teaching in the middle school and for an additional base or restricted base certificate issued under this subsection or subsection (3) of this section, including certification for teaching exceptional children, shall be required to complete one (1) middle school teaching field;

(d) Secondary school: grades eight (8) through twelve (12) with one (1) or more of the following majors [specializations]:

- 1. English;
- 2. Mathematics;
- 3. Social studies;
- 4. Biology;
- 5. Chemistry;
- 6. Physics; or
- 7. Earth science;

(e) Grades five (5) through twelve (12) with one (1) or more of the following majors [specializations]:

- 1. Agriculture;
- 2. Business and marketing education;
- 3. Family and consumer science;
- 4. Industrial education; or
- 5. Technology education;

(f) All grade levels with one (1) or more of the following specialties:

- 1. Art;
- 2. A foreign language;
- 3. Health;
- 4. Physical education;
- 5. Integrated music;
- 6. Vocal music;
- 7. Instrumental music; or
- 8. School media librarian, or

(g) Grades primary through twelve (12) for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following disabilities:

- 1. Learning and behavior disorders;
- 2. Moderate and severe disabilities;
- 3. Hearing impaired;
- 4. Hearing impaired with sign proficiency;
- 5. Visually impaired;

6. Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a master's degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 2; or

7. Communication disorders - SLPA only, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a baccalaureate degree in communication or speech language pathology, in accordance with 16 KAR 2.050, Section 3.

(3) A restricted base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

- (a) Psychology, grades 8-12;
- (b) Sociology, grades eight (8) through twelve (12);
- (c) Journalism, grades eight (8) through twelve (12);
- (d) Speech/media communications, grades eight (8) through twelve (12);
- (e) Theater, primary through grade twelve (12);
- (f) Dance, primary through grade twelve (12);
- (g) Computer information systems, primary through grade twelve (12); or
- (h) English as a second language, primary through grade

twelve (12).

(4) An endorsement to certificates identified in subsection (2) or (3) of this section shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Computer science, grades eight (8) through twelve (12),  
(b) English as second language, primary through grade twelve (12);

(c) Gifted education, primary through grade twelve (12);  
(d) Driver education, grades eight (8) through twelve (12);

(e) Reading and writing which shall require a master's degree in reading, primary through grade twelve (12);

(f) Instructional computer technology, primary through grade twelve (12);

(g) Teacher Leader, all grades;

(h) Other instructional services - school safety, primary through grade twelve (12);

(i) Other instructional services - environmental education, primary through grade twelve (12);

(j) Other instructional services - school nutrition, primary through grade twelve (12). The endorsement for school nutrition shall be obtained by either:

1. Completion of the requirements of Section 5(2) of this administrative regulation; or

2. Obtaining the school food service and nutrition specialist (SFSN) credential issued by the American School Food Service Association (ASFSa); or

(k) Learning and behavior disorders, grades eight (8) through twelve (12).

1. This endorsement shall be issued following completion of the requirements of Section 5(2) of this administrative regulation; and

2. This endorsement shall only be issued to candidates with preparation and certification for a base or restricted base certificate for the secondary grades eight (8) through twelve (12).

Section 5. Additional Certification. (1) A certificate extension may be issued for any base or restricted base certificate area offered in Section 4(2) or (3) of this administrative regulation and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;

(b) Successful completion of the applicable assessments; and

(c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency evaluation.

(2) A certificate endorsement may be issued for any area listed in Section 4(4) of this administrative regulation and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;

(b) Successful completion of the applicable assessments; and

(c) Recommendation from an approved preparation program.

(3)(a) In order to assist districts in meeting the "highly qualified" teacher requirements of the No Child Left Behind Act of 2001, 20 U.S.C. 6301 et seq., a professionally-certified teacher may add a certificate endorsement or extension if the teacher meets the requirements established in paragraph (b) of this subsection.

(b) A certificate extension or certificate endorsement shall be issued if an educator submits a completed application and meets the following requirements:

1. A valid Kentucky professional teaching certificate;

2. Current employment in a certified position or a bona fide offer of employment in a certified position in a Kentucky public school;

3. Successful completion of the applicable content assessments; and

4. Either:

a. A declared major in the area of certification being sought; or

b. A combination of education, experience, professional development, awards and achievements in the area of certification being sought sufficient to demonstrate subject matter competency as evidenced by a score of ninety (90) points on the Index [HOUSE Index] contained within the application form, TC-HQ. Coursework shall be validated on the application by a Kentucky college or university approved by the EPSB to serve as a "clearinghouse" for the purposes of this option.

versity approved by the EPSB to serve as a "clearinghouse" for the purposes of this option.

(4) If a teacher currently holds a professional certificate in the secondary grades, eight (8) through twelve (12), and applies for a certificate extension or endorsement in the same content area for middle school grades five (5) through nine (9), the teacher shall not be required to complete the content assessment.

Section 6. A candidate pursuing certification via an alternative route to certification shall receive the same certificates delineated in Section 4 of this administrative regulation following completion of the appropriate requirements specific to each alternative route.

Section 7. Application for certification or additional certification shall be made on Form TC-1 and shall be accompanied by the fees required by 16 KAR 4:040.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form TC-1, rev. 4/2004, Education Professional Standards Board; and

(b) Form TC-HQ, edition 4/2004, Education Professional Standards Board.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601 [40602], Monday through Friday, 8 a.m. to 4:30 p.m.

TOM STULL, Chairperson

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

#### EDUCATION PROFESSIONAL STANDARDS BOARD (As Amended at ARRS, December 10, 2007)

#### 16 KAR 4:010. Qualifications for professional school positions.

RELATES TO: KRS 158.782, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS

161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for [or] teachers and other professional school personnel, and KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the board. This administrative regulation establishes certificate qualifications for the positions in a local school district for which a specific certificate is not available.

Section 1. This administrative regulation shall not apply to a position for which a specific certificate is available under another administrative regulation promulgated by the board in KAR Title 16.

Section 2. School Business Administrator. The qualifications for the position of school business administrator shall be one (1) of the following:

(1) Kentucky certification for school superintendent;

(2) A bachelor's or advanced degree in business; or

(3) Valid Kentucky certification for school business administrator issued prior to September 1, 1994.

Section 3. Director of Districtwide Services. A director of districtwide services shall qualify for this position on the basis of certification either as a school superintendent, supervisor of instruction, school business administrator, or principal.

Section 4. Director of Federally Supported Programs. A director of federally supported programs shall qualify for this position on the basis of certification either as a school superintendent, supervi-



sor of instruction, or school principal.

Section 5. Consultant. A consultant in elementary education, special education, or in an academic subject field shall qualify for the position on the basis of the following:

(1) Option 1:

(a) Master's degree or nondegree fifth-year program;

(b) [(2)] Certification in the appropriate subject field or service area; and

(c) [(3)] Three (3) years of teaching experience in the appropriate subject field or service area

(2) Option 2: Teacher leader endorsement as established in 16 KAR 5:010

Section 6. Reading Program Consultant. A reading program consultant shall qualify for the position on the basis of certification as a reading specialist or as an elementary consultant with a minimum of thirty-six (36) clock hours of professional development [appropriate] training in reading instruction as verified by the local school district superintendent when the consultant application is submitted.

Section 7. Gifted Education Coordinator. A gifted education coordinator shall qualify for the position on the basis of the following:

(1) A master's degree or nondegree fifth-year program;

(2) A certificate endorsement for teacher of gifted education; and

(3) Three (3) years of teaching experience.

Section 8. Special Education Work Study Program Coordinator. A special education work study program coordinator shall qualify for the position on the basis of certification as a teacher of exceptional children.

Section 9. Professional Development Coordinator. The professional development coordinator shall qualify for the position on the basis of certification as a principal or supervisor of instruction.

Section 10. Instructional Television Coordinator. An instructional television coordinator shall qualify for the position on the basis of certification for classroom teaching.

Section 11. Instructional Coordinator. The instructional coordinator shall qualify for the position on the basis of certification for supervisor of instruction or school principal at the appropriate level.

Section 12. School Health Coordinator. A school health coordinator shall qualify for the position on the basis of certification for classroom teaching or certification for school nurse.

Section 13. Chapter I Remedial Mathematics. A teacher holding a valid early elementary certificate, grades K-4, shall qualify for teaching mathematics in a Chapter I program in grades 5-8.

Section 14. Teachers for Alternative Schools. A classroom teacher in an alternative school shall qualify on the basis of a certificate valid for classroom teaching

Section 15. Instructional Technology Director. An instructional technology director shall qualify on the basis of a certificate valid for classroom teaching.

Section 16. Federal Grant Coordinator - School Level. A federal grant coordinator at the school level shall qualify on the basis of a certificate valid for classroom teaching.

Section 17. Job Training Partnership Act Teacher. A teacher in the JTPA Program shall qualify on the basis of a certificate valid for classroom teaching.

Section 18. Family Resource Center Director. A family resource center director shall qualify on the basis of a certificate valid for classroom teaching or for administration.

Section 19. Migrant Advocate. A migrant advocate shall qualify on the basis of a certificate valid for classroom teaching.

Section 20. Home and Hospital Teacher. A home and hospital teacher shall qualify on the basis of a certificate valid for classroom teaching.

Section 21. Dean of Students. A dean of students shall qualify on the basis of an instructional leadership certificate - school principal.

Section 22. Testing Coordinator. A testing coordinator shall qualify on the basis of an individual intellectual assessment certificate, psychometrist certificate, supervisor certificate, or guidance certificate.

Section 23. District Assessment Coordinator. A district assessment coordinator shall qualify on the basis of certification either as a school superintendent, supervisor of instruction, or school principal.

Section 24. Highly-Skilled Educator. (1) A highly-skilled educator shall qualify on the basis of qualifications established by the Kentucky Department of Education pursuant to KRS 158.782 and 703 KAR 5:170[704-KAR-4.030].

(2)(a) Successful experience as a highly-skilled educator since July 1, 1998 shall be considered administrative experience for purposes of advanced administrative certification.

(b) The Education Professional Standards Board shall review the certification qualifications established in this subsection if any of the following requirements of the highly-skilled educator program are substantially revised by the General Assembly or the Kentucky Department of Education:

1. Selection criteria;
2. Training requirements; or
3. Functions and responsibilities

Section 25. Athletic Director. An athletic director, if serving in a position paid from the certified salary schedule, shall qualify on the basis of a certificate valid for classroom teaching or for administration.

TOM STULL, Chairperson

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

**EDUCATION PROFESSIONAL STANDARDS BOARD**  
(As Amended at ARRS, December 10, 2007)

**16 KAR 5:010. Standards for accreditation of educator preparation units and approval of programs.**

RELATES TO: KRS 161.028, 161.030, 164.945, 164.946, [164.947, 20 U.S.C. 1021-1030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel, and KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the board. This administrative regulation establishes the standards for accreditation of an educator preparation unit and approval of a program to prepare an educator.

Section 1. Definitions. (1) "AACTE" means the American Association of Colleges for Teacher Education.

(2) "Biennial report" means the report prepared by the EPSB summarizing the institutionally-prepared annual reports for a two

(2) year period.

(3) "Board of examiners" means the team who reviews an institution on behalf of NCATE or EPSB.

(4) "EPSB" means the Education Professional Standards Board.

(5) "NCATE" means the National Council for Accreditation of Teacher Education.

(6) "NCATE accreditation" means a process for assessing and enhancing academic and educational quality through voluntary peer review.

(7) "State accreditation" means recognition by the EPSB that an institution has a professional education unit that has met accreditation standards as a result of review, including an on-site team review.

Section 2. Accreditation Requirements. (1) An institution offering an educator certification program or a program leading to a rank change:

(a) Shall be accredited by the state, and

(b) May be accredited by NCATE.

(2) State accreditation shall be:

(a) A condition of offering an educator certification program or a program leading to a rank change; and

(b) Based on the national accreditation standards which include the program standards enumerated in KRS 161.028(1)(b), and which are set out in the "Professional Standards for the Accreditation of Schools, Colleges, and Departments of Education" established by NCATE. The accreditation standards shall include:

1. Standard 1 - Candidate Knowledge, Skills, and Dispositions. Candidates preparing to work in schools as teachers or other professional school personnel know and demonstrate the content, pedagogical, and professional knowledge, skills, and dispositions necessary to help all students learn. Assessments indicate that candidates meet professional, state, and institutional standards

2. Standard 2 - Assessment System and Unit Evaluation. The unit has an assessment system that collects and analyzes data on applicant qualifications, candidate and graduate performance, and unit operations to evaluate and improve the unit and its programs.

3. Standard 3 - Field Experience and Clinical Practice. The unit and its school partners design, implement, and evaluate field experiences and clinical practice so that teacher candidates and other school personnel develop and demonstrate the knowledge, skills, and dispositions necessary to help all students learn.

4. Standard 4 - Diversity. The unit designs, implements, and evaluates curriculum and experiences for candidates to acquire and apply the knowledge, skills, and dispositions necessary to help all students learn. These experiences include working with diverse higher education and school faculty, diverse candidates, and diverse students in P-12 schools.

5. Standard 5 - Faculty Qualifications, Performance, and Development. Faculty are qualified and model best professional practices in scholarship, service, and teaching, including the assessment of their own effectiveness as related to candidate performance, they also collaborate with colleagues in the disciplines and schools. The unit systematically evaluates faculty performance and facilitates professional development.

6. Standard 6 - Unit Governance and Resources. The unit has the leadership, authority, budget, personnel, facilities, and resources including information technology resources, for the preparation of candidates to meet professional, state, and institutional standards.

(3) NCATE accreditation shall not be a condition of offering an educator certification program or a program leading to a rank change.

(4) All educator preparation institutions and programs operating in Kentucky that require licensure by the Council on Postsecondary Education under KRS 164.945, 164.946, ~~164.946~~, and 13 KAR 1:020 shall:

(a) Be accredited by the state through the EPSB under this administrative regulation as a condition of offering an educator certification program or a program leading to rank change; and

(b) Comply with the EPSB "Accreditation of Preparation Programs Procedure".

Section 3. Developmental Process for New Educator Preparation Programs. (1) New educator preparation institutions requesting approval from the EPSB to develop educator preparation programs that do not have a historical foundation from which to show the success of candidates or graduates as required under Section 9 of this administrative regulation shall follow the four (4) stage developmental process established in this section to gain temporary authority to admit candidates.

(2) Stage One.

(a) The educator preparation institution shall submit an official letter from the chief executive officer and the governing board of the institution to the EPSB for review and acceptance by the board indicating the institution's [their] intent to begin the developmental process establish an educator preparation program.

(b) The EPSB staff shall make a technical visit to the institution.

(c) The institution shall submit the following documentation:

1. Program descriptions required by Section 11 of this administrative regulation;

2. Continuous assessment plan required by Section 11 of this administrative regulation; and

3. Fulfillment of Preconditions 1, 2, 3, 5, 7, 8, and 9 established in Section 9 of this administrative regulation.

(d) The EPSB shall provide for a paper review of this documentation by the Reading Committee and the Continuous Assessment Review Committee.

(e) Following review of the documentation, EPSB staff shall make an additional technical visit to the institution.

(3) Stage Two.

(a) A board of examiners team shall make a one (1) day visit to the institution to verify the paper review.

(b) The team shall be comprised of:

1. One (1) representative from a public postsecondary institution;

2. One (1) representative from an independent postsecondary institution; and

3. One (1) representative from the Kentucky Education Association.

(c) The team shall submit a written report of its findings to the EPSB.

(d) The EPSB shall provide a copy of the written report to the institution.

(e)1. The institution may submit a written rejoinder to the report within thirty (30) working days of its receipt.

2. The rejoinder may be supplemented by materials pertinent to the conclusions found in the team's report.

(f) The Accreditation Audit Committee shall review the materials gathered during Stages One and Two and make one (1) of the following recommendations to the EPSB with regards to temporary authorization:

1. Approval;

2. Approval with conditions; or

3. Denial of approval.

(4) Stage Three.

(a) The EPSB shall review the materials and recommendations from the Accreditation Audit Committee and make one (1) of the following determinations with regards to temporary authorization:

1. Approval,

2. Approval with conditions; or

3. Denial of approval.

(b) An institution receiving approval or approval with conditions shall:

1. Hold this temporary authorization for two (2) years; and

2. Continue the developmental process and the first accreditation process established in this administrative regulation.

(c) An institution denied temporary authorization may reapply.

(d) During the two (2) year period of temporary authorization, the institution shall:

1. Admit candidates,

2. Monitor, evaluate, and assess the academic and professional competency of candidates; and

3. Report regularly to the EPSB on the institution's progress.

(e) During the two (2) year period of temporary authorization, the EPSB:

1. May schedule additional technical visits, and
2. Shall monitor progress by paper review of annual reports, admission and exit data, and trend data.

(5) Stage Four.

- (a) The institution shall host a first accreditation visit within two (2) years of the approval or approval with conditions of temporary authorization.

(b) All further accreditation activities shall be governed by Section 9 of this administrative regulation [the remaining sections of this administrative regulation, which govern the first accreditation of an educator preparation institution].

Section 4. Schedule and Communications. (1) The EPSB shall send an accreditation and program approval schedule to each educator preparation institution no later than August 1 of each year. The first accreditation cycle shall provide for an on-site continuing accreditation visit at a five (5) year interval. The regular accreditation cycle shall provide for an on-site continuing accreditation visit at a seven (7) year interval.

(2) The accreditation and program approval schedule shall be directed to the official designated by the institution as the head of the educator preparation unit with a copy to the president. The head of the educator preparation unit shall disseminate the information to administrative units within the institution, including the appropriate college, school, department, and office.

(3) The EPSB shall annually place a two (2) year schedule of on-site accreditation visits for a Kentucky institution in the agenda materials and minutes of an EPSB business meeting.

(4) The EPSB shall coordinate dates for a joint state and NCATE accreditation on-site visit.

(5) At least six (6) months prior to a scheduled on-site visit, an institution seeking NCATE or state accreditation shall give public notice of the upcoming visit.

(6) The governance unit for educator preparation shall be responsible for the preparation necessary to comply with the requirements for timely submission of materials for accreditation and program approval as established in this administrative regulation.

Section 5. Annual Reports. (1)(a) Each institution shall report annually to the EPSB to provide data about:

1. Faculty and students in each approved program;
2. Progress made in addressing areas for improvement identified by its last accreditation evaluation; and
3. Major program developments in each NCATE standard.

(b)1. An institution seeking accreditation from NCATE and EPSB shall complete the Professional Educator Data System (PEDS) sponsored by AACTE and NCATE and located online at <http://www.aacte.org>. After the PEDS is submitted electronically, the institution shall print a copy of the completed report and mail it to the EPSB at 100 Airport Road, Frankfort, Kentucky 40601.

2. An institution seeking state-only accreditation shall complete the Annual State-Only Institutional Data Report [annual report] online at <http://www.kyepsb.net/teacherprep/index.asp> and submit it electronically to the division contact through the EPSB Web site.

(2)(a) The EPSB shall review each institution's annual report to monitor the capacity of a unit to continue a program of high quality.

(b) The EPSB may pursue action against the unit based on data received in this report.

(3) The Accreditation Audit Committee [Reading Committee] shall submit a biennial report, based on data submitted in the annual reports, to the unit head in preparation for an on-site accreditation visit.

Section 6. Content Program Review Committee. (1)(a) The EPSB shall appoint and train a content program review committee in each of the certificate areas to provide content area expertise to EPSB staff and the Reading Committee.

(b) Nominations for the content program review committees shall be solicited from the education constituent groups listed in Section 13[42] of this administrative regulation.

(2)(a) A content program review committee shall review an educator preparation program to establish congruence of the program with standards of nationally-recognized specialty program associations and appropriate state performance standards.

(b) A content program review committee shall examine program content and faculty expertise.

(3) A content program review committee shall submit written comments to EPSB staff and the Reading Committee for use in the program approval process.

(4) A content program review committee shall not make any determination or decision regarding the approval or denial of a program.

Section 7. Continuous Assessment Review Committee. (1) The EPSB shall appoint and train a Continuous Assessment Review Committee to be comprised of P-12 and postsecondary faculty who have special expertise in the field of assessment.

(2) The Continuous Assessment Review Committee shall conduct a preliminary review of each institution's continuous assessment plan.

(3) The Continuous Assessment Review Committee shall meet in the spring and fall semesters of each year to analyze the continuous assessment plan for those institutions that are within one (1) year of their on-site visit.

(4) The Continuous Assessment Review Committee shall provide technical assistance to requesting institutions in the design, development, and implementation of the continuous assessment plan.

Section 8. Reading Committee. (1) The EPSB shall appoint and train a Reading Committee representative of the constituent groups to the EPSB.

(2) The Reading Committee shall conduct a preliminary review of accreditation materials, annual reports, and program review documents from an educator preparation institution for adequacy, timeliness, and conformity with the corresponding standards.

(3) For first accreditation, the Reading Committee shall:

(a) Review the preconditions documents prepared by the institution; and

(b) Send to the EPSB a preconditions report indicating whether a precondition has been satisfied by documentation. If a precondition has not been met, the institution shall be asked to revise or send additional documentation. A preconditions report stating that the preconditions have been met shall be inserted into the first section of the institutional report.

(4) For continuing accreditation and program approval, the Reading Committee shall:

(a) Determine that a submitted material meets requirements,

(b) Ask that EPSB staff resolve with the institution a discrepancy or omission in the report or program;

(c) Refer an unresolved discrepancy or omission to the on-site accreditation team for resolution; or

(d) Recommend that the evaluation and approval process be terminated as a result of a severe deficiency in the submitted material.

(5) The EPSB shall discuss a recommendation for termination with the originating institution. The institution may submit a written response which shall be presented, with the Reading Committee comments and written accreditation and program, by EPSB staff for recommendation to the full EPSB.

Section 9. Preconditions for First Unit Accreditation. (1) Eighteen (18) months prior to the scheduled on-site visit of the evaluation team, the educator preparation institution shall submit information to the EPSB, and to NCATE if appropriate, documenting the fulfillment of the preconditions for the accreditation of the educator preparation unit, as established in subsection (2) of this section.

(2) As a precondition for experiencing an on-site first evaluation for educator preparation, the institution shall present documentation to show that the following conditions are satisfied.

(a) Precondition Number 1. The institution recognizes and identifies a professional education unit that has responsibility and authority for the preparation of teachers and other professional education personnel. Required documentation shall include:

1. A letter from the institution's chief executive officer that designates the unit as having primary authority and responsibility for professional education programs,

2. A chart or narrative that lists all professional education pro-

grams offered by the institution, including any nontraditional and alternative programs. The chart or narrative report shall depict:

- a. The degree or award levels for each program;
- b. The administrative location for each program; and
- c. The structure or structures through which the unit implements its oversight of all programs;

3. If the unit's offerings include off-campus programs, a separate chart or narrative as described in subparagraph 2 of this paragraph [above], prepared for each location at which off-campus programs are geographically located; and

4. An organizational chart of the institution that depicts the professional education unit and indicates the unit's relationship to other administrative units within the college or university.

(b) Precondition Number 2. A dean, director, or chair is officially designated as head of the unit and is assigned the authority and responsibility for its overall administration and operation. The institution shall submit a job description for the head of the professional education unit.

(c) Precondition Number 3. Written policies and procedures guide the operations of the unit. Required documentation shall include cover page and table of contents for codified policies, by-laws, procedures, and student handbooks.

(d) Precondition Number 4. The unit has a well-developed conceptual framework that establishes the shared vision for a unit's efforts in preparing educators to work in P-12 schools and provides direction for programs, courses, teaching, candidate performance, scholarship, service, and unit accountability. Required documentation shall include:

1. The vision and mission of the institution and the unit;
2. The unit's philosophy, purposes, and goals;
3. Knowledge bases including theories, research, the wisdom of practice, and education policies, that inform the unit's conceptual framework;
4. Candidate proficiencies aligned with the expectations in professional, state, and institutional standards; and
5. A description of the system by which the candidate proficiencies described are regularly assessed.

(e) Precondition Number 5. The unit regularly monitors and evaluates its operations, the quality of its offerings, the performance of candidates, and the effectiveness of its graduates. Required documentation shall include a description of the unit's assessment and data collection systems that support unit responses to Standards 1 and 2 established in Section 2(2)(b)1 and 2 of this administrative regulation.

(f) Precondition Number 6. The unit has published criteria for admission to and exit from all initial teacher preparation and advanced programs and can provide summary reports of candidate performance at exit. Required documentation shall include:

1. A photocopy of published documentation (e.g., from a catalog, student teaching handbook, application form, or web page) listing the basic requirements for entry to, retention in, and completion of professional education programs offered by the institution, including any nontraditional, alternative or [and] off-campus programs; and

2. A brief summary of candidate performance on assessments conducted for admission into programs and exit from them. This summary shall include:

- a. The portion of Title II documentation related to candidate admission and completion that was prepared for the state; and
- b. A compilation of results on the unit's own assessments.

(g) Precondition Number 7. The unit's programs are approved by the appropriate state agency or agencies and the unit's summary pass rate meets or exceeds the required state pass rate of eighty (80) percent. Required documentation shall include:

1. The most recent approval letters from the EPSB and CPE, including or appended by a list of approved programs. If any program is not approved, the unit shall provide a statement that it is not currently accepting new applicants into the nonapproved program or programs. For programs that are approved with qualifications or are pending approval, the unit shall describe how it will bring the program or programs into compliance; and

2. Documentation submitted to the state for Title II, indicating that the unit's summary pass rate on state licensure examinations meets or exceeds the required state pass rate of eighty (80) per-

cent. If the required state pass rate is not evident on this documentation, it shall be provided on a separate page.

(h) Precondition Number 8. If the institution has chosen to pursue dual accreditation from both the state and NCATE and receive national recognition for a program or programs, the institution shall submit its programs for both state and national review.

(i) Precondition Number 9. The institution is accredited, without probation or an equivalent status, by the appropriate regional institutional accrediting agency recognized by the U.S. Department of Education. Required documentation shall include a copy of the current regional accreditation letter or report that indicates institutional accreditation status.

Section 10. Institutional Report. (1) For a first accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a written narrative describing the unit's conceptual framework and evidence that demonstrates the six (6) standards are met. The written narrative may be supplemented by a chart, graph, diagram, table, or other similar means of presenting information. The institutional report, including appendices, shall not exceed 100 pages in length. The report shall be submitted to the EPSB and to NCATE, if appropriate.

(2) For a continuing accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a report not to exceed 100 pages addressing changes at the institution that have occurred since the last accreditation visit, a description of the unit's conceptual framework, and evidence that demonstrates that the six (6) standards are met. The narrative shall describe how changes relate to an accreditation standard and the results of the continuous assessment process, including program evaluation. The report shall be submitted to the EPSB and to NCATE, if appropriate.

Section 11. Program Review Documents. Eighteen (18) months for first accreditation and twelve (12) months for continuing accreditation in advance of the scheduled on-site evaluation visit, the educator preparation unit shall prepare and submit to the EPSB for each separate program of educator preparation for which the institution is seeking approval a concise description which shall provide the following information:

(1) The unit's conceptual framework for the preparation of school personnel which includes:

- (a) The mission of the institution and unit;
- (b) The unit's philosophy, purposes, professional commitments, and dispositions;
- (c) Knowledge bases, including theories, research, the wisdom of practice, and education policies;
- (d) Performance expectations for candidates, aligning the expectations with professional, state, and institutional standards; and
- (e) The system by which candidate performance is regularly assessed;

(2) The unit's continuous assessment plan that provides:

- (a) An overview of how the unit will implement continuous assessment to assure support and integration of the unit's conceptual framework;

(b) Each candidate's mastery of content prior to exit from the program, incorporating the assessment of the appropriate performance standards;

(c) Assessment of the program that includes specific procedures used to provide feedback and make recommendations to the program and unit; and

(d) A monitoring plan for candidates from admission to exit;

(3) Program experiences including the relationship among the program's courses and experiences, content standards of the relevant national specialty program associations (e.g., National Council of Teachers of Mathematics, National Council for the Social Studies, The Council for Exceptional Children, North American Association for Environmental Education, etc.), student academic expectations as established in 703 KAR 4:060, and relevant state performance standards established in 16 KAR 1:010 or incorporated by reference into this administrative regulation including:

- (a) NCATE Unit Standards;
- (b) Kentucky's Safety Educator Standards for Preparation and Certification;

(c) National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards; and

(d) Kentucky's Standards for Guidance Counseling Programs;

(4)(a) Identification of how the program integrates the unit's continuous assessment to assure each candidate's mastery, prior to exit from the program, of content of the academic discipline, and state performance standards as established in 16 KAR 1:010; and

(b) Identification of how the program utilizes performance assessment to assure that each candidate's professional growth is consistent with the Kentucky [New and Experienced] Teacher Standards as established in 16 KAR 1:010;

(5) A list of faculty responsible for and involved with the conduct of the specific program, along with the highest degree of each, responsibilities for the program, and status of employment within the unit and the university; and

(6) A curriculum guide sheet or contract provided to each candidate [student] before or at the time of admittance to the program.

**Section 12. Teacher Leader Master's[Masters] Programs and Planned Fifth-Year Programs for Rank II.** (1) All master's programs for rank change or planned fifth-year program for Rank II approved or accredited by the EPSB prior to May 31, 2008 shall no longer be approved or accredited as of December 31, 2010.

(a) Master's[Masters] programs for initial certification shall be exempt from the requirements of this section.

(b) A master's[masters] program or planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 shall cease admitting new candidates after December 31, 2010.

(c) Candidates admitted to a master's program [masters programs] or planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 shall complete the program by January 31, 2013.

(d) An institution of higher learning with a master's[masters] program or a[an] planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 may submit a redesigned program for approval pursuant to the requirements of subsection (2) of this section beginning May 31, 2008.

(e) An institution may become operational beginning January 1, 2009, if the institution:

1. Submits a redesigned master's program or a planned fifth-year program for Rank II for review pursuant to the requirements of subsection (2) of this section; and

2. Receives approval of the redesigned program by the EPSB pursuant to Section 22 of this administrative regulation. [An institution submitting a redesigned masters program or a planned fifth year program for Rank II for review pursuant to the requirements of subsection (2) of this section, after approval of the redesigned program by the EPSB pursuant to Section 22 of this administrative regulation, may become operational beginning January 1, 2009.]

(f) Institutions submitting a redesigned master's program [masters programs] or planned fifth-year program for Rank II shall not be subject to any submission dates for program approval until December 31, 2010.

(g)1. The EPSB shall appoint a Master's[Masters] Redesign Review Committee to conduct reviews of redesigned master's[masters] programs and planned fifth-year programs for Rank II submitted for approval between May 31, 2008 and December 31, 2010.

2. A master's program or a [Masters programs and] planned fifth-year program for Rank II submitted for approval between May 31, 2008 and December 31, 2010 shall not be reviewed by the Continuous Assessment Review Committee, Content Program Review Committee, or the Reading Committee prior to presentation to the EPSB pursuant to Section 22(2) of this administrative regulation, but shall be reviewed by the Master's[Masters] Redesign Review Committee.

3 a. After review of a master's[masters] program or planned fifth-year program for Rank II, the Master's[Masters] Redesign Review Committee shall issue one (1) of the following recommendations to the Educational Professional Standards Board:

i. Approval;

ii. Approval with conditions; or

iii. Denial of approval.

b. The EPSB shall consider recommendations from staff and the Master's[Masters] Redesign Review Committee and shall issue a decision pursuant to Section 22(4) of this administrative regulation.

(2)(a) In addition to the other requirements in this administrative regulation, Beginning May 31, 2008, the educator preparation unit shall prepare and submit to the EPSB for each separate master's[masters] program or planned fifth-year program for Rank II for which the institution is seeking approval a concise description which shall provide the following information:

(a)(b) Program design components which shall include the following descriptions and documentation of:

1. The unit's plan to collaborate with school districts to design courses, professional development, and job-embedded professional experiences that involve teachers at the elementary, middle, and secondary levels;

2. The unit's collaboration plan with the institution's Arts and Science faculty to meet the academic and course accessibility needs of candidates;[-]

3. The unit's process to individualize a program to meet the candidate's professional growth or improvement plan;

4. The unit's method to incorporate interpretation and analysis of annual P-12 student achievement data into the program; and

5. The institution's plan to facilitate direct service to the collaborating school districts by education faculty members.

(b)(c) Program curriculum that shall include core component courses designed to prepare candidates to:

1. Be leaders in their schools and districts;

2. Evaluate high-quality research on student learning and college readiness;

3. Deliver differentiated instruction for P-12 students based on continuous assessment of student learning and classroom management;

4. Gain expertise in content knowledge, as applicable;

5. Incorporate reflections that inform best practice in preparing P-12 students for postsecondary opportunities;

6. Support P-12 student achievement in diverse settings;

7. Enhance instructional design utilizing the Program of Studies, Core Content for Assessment, and college readiness standards;

8. Provide evidence of candidate mastery of Kentucky Teacher Standards utilizing advanced level performances and Specialized Professional Associations (SPA) Standards if applicable; and

9. Design and conduct professionally relevant research projects; and[-]

(c)(d) The unit's continuous assessment plan that includes, in addition to the requirements of Section 11(2) of this administrative regulation:

1. Instruments to document and evaluate candidate ability to demonstrate impact on P-12 student learning;

2. Clinical experiences and performance activities; and

3. A description of a culminating performance-based assessment.

(3)(a) A master's program for rank change approved pursuant to this section shall be known as a Teacher Leader Master's Program.

(b) Upon completion of a Teacher Leader Master's Program and recommendation of the institution, a candidate may apply to the EPSB for a Teacher Leader endorsement.

(c)1 An institution with an approved Teacher Leader Master's Program may establish an endorsement program of teacher leadership coursework for any candidate who received a Master's degree at an out of state institution or who received a master's degree from a Kentucky program approved prior to May 31, 2008. [Institutions with approved Teacher Leader Master's Program may establish an endorsement program of teacher leadership coursework for candidates who received master's degrees at out of state institutions or who received master's degrees from Kentucky programs approved prior to May 31, 2008.]

2. Upon completion of the teacher leadership course work and recommendation of the institution, a candidate who has received a master's degree at an out of state institution or a master's degree

from a Kentucky program approved prior to May 31, 2008, may apply to the EPSB for a Teacher Leader endorsement.

**Section 13, [42] Board of Examiners.** (1) A Board of Examiners shall:

(a) Be recruited and appointed by the EPSB. The board shall be comprised of an equal number of representatives from three (3) constituent groups:

1. Teacher educators;
2. P-12 teachers and administrators; and
3. State and local policymaker groups; and

(b) Include at least thirty-six (36) members representing the following constituencies:

1. Kentucky Education Association, at least ten (10) members;
2. Kentucky Association of Colleges of Teacher Education, at least ten (10) members; and
3. At least ten (10) members nominated by as many of the following groups as may wish to submit a nomination:
  - a. Kentucky Association of School Administrators;
  - b. Persons holding positions in occupational education;
  - c. Kentucky Branch National Congress of Parents and Teachers;
  - d. Kentucky School Boards Association;
  - e. Kentucky Association of School Councils;
  - f. Kentucky Board of Education;
  - g. Kentucky affiliation of a national specialty program association;
  - h. Prichard Committee for Academic Excellence;
  - i. Partnership for Kentucky Schools; and
  - j. Subject area specialists in the Kentucky Department of Education.

(2) An appointment shall be for a period of four (4) years. A member may serve an additional term if renominated and reappointed in the manner prescribed for membership. A vacancy shall be filled by the EPSB as it occurs.

(3) A member of the Board of Examiners and a staff member of the EPSB responsible for educator preparation and approval of an educator preparation program shall be trained by NCATE or trained in an NCATE-approved state program.

(4) The EPSB shall select and appoint for each scheduled on-site accreditation a team of examiners giving consideration to the number and type of programs offered by the institution. Team appointments shall be made at the beginning of the academic year for each scheduled evaluation visit. A replacement shall be made as needed.

(5) For an institution seeking NCATE accreditation, the EPSB and NCATE shall arrange for the joint Board of Examiners to be co chaired by an NCATE appointed team member and a state team chair appointed by the EPSB. The joint Board of Examiners shall be composed of a majority of NCATE appointees in the following proportions, respectively: NCATE and state - six (6) and five (5), five (5) and four (4), four (4) and three (3), three (3) and two (2). The size of the Board of Examiners shall depend upon the size of the institution and the number of programs to be evaluated.

(6) For an institution seeking state-only accreditation, the EPSB shall appoint a chair from a pool of trained Board of Examiners members.

(7) For state-only accreditation, the Board of Examiners shall have six (6) members.

(8) The EPSB shall make arrangements for the release time of a Board of Examiner member from his place of employment for an accreditation visit.

**Section 14, [43] Assembly of Records and Files for the Evaluation Team.** For convenient access, the institution shall assemble, or make available, records and files of written materials which supplement the institutional report and which may serve as further documentation. The records and files shall include:

- (1) The faculty handbook;
- (2) Agenda, list of participants, and products of a meeting, workshop, or training session related to a curriculum and governance group impacting professional education;
- (3) Faculty vitae or resumes;
- (4) A random sample of graduates' transcripts;

(5) Conceptual framework documents,

(6) A curriculum program, rejoinder, or specialty group response that was submitted as a part of the program review process;

(7) Course syllabi;

(8) Policies, criteria and student records related to admission and retention;

(9) Samples of students' portfolios and other performance assessments;

(10) Record of performance assessments of candidate progress and summary of results including a program change based on continuous assessment;

(11) Student evaluations, including student teaching and internship performance; and

(12) Data on performance of graduates, including results of state licensing examinations and job placement rates.

**Section 15, [44] Previsit to the Institution.** No later than one (1) month prior to the scheduled on-site evaluation visit, the EPSB shall conduct a previsit to the institution to make a final review of the arrangements. For an NCATE-accredited institution, the previsit shall be coordinated with NCATE.

**Section 16, [45] On-site Accreditation Visit.** (1) At least one (1) staff member of the EPSB shall be assigned as support staff and liaison during the accreditation visit.

(2) The EPSB shall reimburse a state team member for travel, lodging, and meals in accordance with 200 KAR 2:006. A team member representing NCATE shall be reimbursed by the educator preparation institution.

(3) The evaluation team shall conduct an on-site evaluation of the self-study materials prepared by the institution and seek out additional information, as needed, to make a determination as to whether the standards were met for the accreditation of the institution's educator preparation unit and for the approval of an individual educator preparation program. The evaluation team shall make use of the analyses prepared through the preliminary review process.

(4)(a) An off-campus site which offers a self-standing program shall require a team review. If additional team time is required for visiting an off-campus site, the team chair, the institution, and the EPSB shall negotiate special arrangements.

(b) Off-campus programs shall be:

1. Considered as part of the unit and the unit shall be accredited, not the off-campus programs; and

2. Approved in accordance with Section 28 of this administrative regulation.

(5) In a joint team, all Board of Examiners members shall vote on whether the educator preparation institution has met the six (6) NCATE standards. A determination about each standard shall be limited to the following options:

- (a) Met;
- (b) Met, with one (1) or more defined areas for improvement; or
- (c) Not met. .

(6)(a) The Board of Examiners shall review each program and cite the areas for improvement for each, if applicable.

(b) The Board of Examiners shall define the areas for improvement in its report.

(7) The processes established in subsections (5) and (6) of this section shall be the same for first and continuing accreditation.

(8) The on-site evaluation process shall end with a brief oral report:

- (a) By the NCATE team chair and state team chair for a joint state/NCATE visit; or
- (b) By the state team chair for a state-only visit.

**Section 17, [46] Preparation and Distribution of the Evaluation Report.** (1) For a state-only visit, the evaluation report shall be prepared and distributed as follows:

(a) The EPSB staff shall collect the written evaluation pages from each Board of Examiners member before leaving the institution.

(b) The first draft shall be typed and distributed to Board of Examiners members.



(c) A revision shall be consolidated by the Board of Examiners chair who shall send the next draft to the unit head to review for factual accuracy.

(d) The unit head shall submit written notification to the EPSB confirming receipt of the draft.

(e) The unit head shall submit to the EPSB and Board of Examiners chair within ten (10) working days either:

1. A written correction to the factual information contained in the report; or

2. Written notification that the unit head has reviewed the draft and found no factual errors.

(f) The Board of Examiners chair shall submit the final report to the EPSB and a copy to each member of the Board of Examiners.

(g) The final report shall be printed by the EPSB and sent to the institution and to the Board of Examiners members within thirty (30) to sixty (60) working days of the conclusion of the on-site visit.

(2) For a joint state/NCATE visit, the evaluation report shall be prepared and distributed as follows:

(a) The NCATE chair shall be responsible for the preparation, editing and corrections to the NCATE report.

(b) The state chair shall be responsible for the preparation, editing and corrections of the state report in the same manner established in subsection (1) of this section for a state-only visit.

(c) The EPSB Board of Examiners report for state/NCATE continuing accreditation visits shall be prepared in accordance with the Board of Examiners Report Format for State/NCATE Accreditation Visits.

Section 18. [47] Institutional Response to the Evaluation Report. (1)(a) The institution shall acknowledge receipt of the evaluation report within thirty (30) working days of receipt of the report.

(b) If desired, the institution shall submit within thirty (30) working days of receipt of the report a written rejoinder to the report which may be supplemented by materials pertinent to a conclusion found in the evaluation report.

(c) The rejoinder and the Board of Examiners report shall be the primary documents reviewed by the Accreditation Audit Committee and EPSB.

(d) An unmet standard or area of improvement statement cited by the team may be recommended for change or removal by the Accreditation Audit Committee or by the EPSB because of evidence presented in the rejoinder. The Accreditation Audit Committee or the EPSB shall not be bound by the Board of Examiners decision and may reach a conclusion different from the Board of Examiners or NCATE.

(2) If a follow-up report is prescribed through accreditation with conditions, the institution shall follow the instructions that are provided with the follow-up report.

(3) If the institution chooses to appeal a part of the evaluation results, the procedure established in Section 24 [22] of this administrative regulation shall be followed.

(4) The institution shall make an annual report relating to the unit for educator preparation and relating to the programs of preparation as required by Section 5 of this administrative regulation.

Section 19. [48] Accreditation Audit Committee. (1) The Accreditation Audit Committee shall be a committee of the EPSB, and shall report to the full EPSB. The EPSB shall appoint the Accreditation Audit Committee as follows:

(a) One (1) lay member;

(b) Two (2) classroom teachers, appointed from nominees provided by the Kentucky Education Association;

(c) Two (2) teacher education representatives, one (1) from a state-supported institution and one (1) from an independent educator preparation institution, appointed from nominees provided by the Kentucky Association of Colleges for Teacher Education; and

(d) Two (2) school administrators appointed from nominees provided by the Kentucky Association of School Administrators.

(2) The chairperson of the EPSB shall designate a member of the Accreditation Audit Committee to serve as its chairperson.

(3) An appointment shall be for a period of four (4) years except that three (3) of the initial appointments shall be for a two (2) year term. A member may serve an additional term if renominated and reappointed in the manner established for membership. A

vacancy shall be filled as it occurs in a manner consistent with the provisions for initial appointment.

(4) A member of the Accreditation Audit Committee shall be trained by NCATE or in NCATE-approved training.

(5) Following an on-site accreditation visit, the Accreditation Audit Committee shall review the reports and materials constituting an institutional self-study, the report of the evaluation team, and the institutional response to the evaluation report. The committee shall then prepare a recommendation for consideration by the EPSB.

(a) The committee shall review procedures of the Board of Examiners to determine whether approved accreditation guidelines were followed.

(b) For each institution, the committee shall make a recommendation with respect to the accreditation of the institutional unit for educator preparation as well as for approval of the individual programs of preparation.

(c) For first accreditation, one (1) of four (4) recommendations shall be made:

1. Accreditation;
2. Provisional accreditation;
3. Denial of accreditation; or
4. Revocation of accreditation.

(d) For regular continuing accreditation, one (1) of four (4) recommendations shall be made:

1. Accreditation;
2. Accreditation with conditions;
3. Accreditation with probation; or
4. Revocation of accreditation.

(6) For both first and continuing accreditation, the Accreditation Audit Committee shall review each program report including a report from the Reading Committee, Board of Examiners team, and institutional response and shall make one (1) of three (3) recommendations for each individual preparation program to the EPSB:

- (a) Approval;
- (b) Approval with conditions; or
- (c) Denial of approval.

(7) The Board of Examiners Team Chair may write a separate response to the recommendation of the Accreditation Audit Committee's if the Accreditation Audit Committee's decision differs from the Board of Examiners' evaluation report.

(8) The Accreditation Audit Committee shall compile accreditation data and information for each Kentucky institution that prepares school personnel. It shall prepare for the EPSB reports and recommendations regarding accreditation standards and procedures as needed to improve the accreditation process and the preparation of school personnel.

Section 20. [49] Official State Accreditation Action by the Education Professional Standards Board. (1) A recommendation from the Accreditation Audit Committee shall be presented to the full EPSB.

(2) The EPSB shall consider the findings and recommendations of the Accreditation Audit Committee and make a final determination regarding the state accreditation of the educator preparation unit.

(3) Decision options following a first accreditation visit shall include:

(a) Accreditation.

1. This accreditation decision indicates that the unit meets each of the six (6) NCATE standards for unit accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the professional education unit shall be expected to describe progress made in addressing the areas for improvement cited in the EPSB's action report.

2. The next on-site visit shall be scheduled five (5) years following the semester of the visit;

(b) Provisional accreditation.

1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards. The unit has accredited status but shall satisfy provisions by meeting each previously-unmet standard. EPSB shall require submission of documentation that addresses the unmet standard or standards within six (6)



months of the accreditation decision, or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the provisional accreditation decision was granted. If the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years. Following the focused visit, the EPSB shall decide to:

- a. Accredite; or
- b. Revoke accreditation.

2. If the unit is accredited, the next on-site visit shall be scheduled for five (5) years following the semester of the first accreditation visit;

(c) Denial of accreditation. This accreditation decision indicates that the unit does not meet one (1) or more of the NCATE standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates; or

(d) Revocation of accreditation. This accreditation decision indicates that the unit has not sufficiently addressed the unmet standard or standards following a focused visit.

(4) Decision options following a continuing accreditation visit shall include:

- (a) Accreditation.

1. This accreditation decision indicates that the unit meets each of the six (6) NCATE standards for unit accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the professional education unit shall be expected to describe progress made in addressing the areas for improvement cited in EPSB's action report.

2. The next on-site visit shall be scheduled for seven (7) years following the semester of the visit;

- (b) Accreditation with conditions.

1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards. If the EPSB renders this decision, the unit shall maintain its accredited status, but shall satisfy conditions by meeting previously unmet standards. EPSB shall require submission of documentation that addresses the unmet standard or standards within six (6) months of the decision to accredit with conditions, or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the accreditation with conditions decision was granted. If the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years. Following the focused visit, the EPSB shall decide to:

- a. Continue accreditation; or
- b. Revoke accreditation

2. If the EPSB renders the decision to continue accreditation, the next on-site visit shall be scheduled for seven (7) years following the semester in which the continuing accreditation visit occurred,

- (c) Accreditation with probation.

1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. As a result of the continuing accreditation review, the EPSB has determined that areas for improvement with respect to standards may place an institution's accreditation in jeopardy if left uncorrected. The institution shall schedule an on-site visit within two (2) years of the semester in which the probationary decision was rendered. This visit shall mirror the process for first accreditation. The unit as part of this visit shall address all NCATE standards in effect at the time of the probationary review at the two (2) year point. Following the on-site review, the EPSB shall decide to:

- a. Continue accreditation; or
- b. Revoke accreditation.

2. If accreditation is continued, the next on-site visit shall be scheduled for five (5) years after the semester of the probationary visit; or

(d) Revocation of accreditation. Following a comprehensive site visit that occurs as a result of an EPSB decision to accredit with probation or to accredit with conditions, this accreditation decision indicates that the unit does not meet one (1) or more of the

NCATE standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. Accreditation shall be revoked if the unit:

1. No longer meets preconditions to accreditation, such as loss of state approval or regional accreditation,

2. Misrepresents its accreditation status to the public;

3. Falsely reports data or plagiarized information submitted for accreditation purposes; or

4. Fails to submit annual reports or other documents required for accreditation.

(5) Notification of EPSB action to revoke continuing accreditation or deny first accreditation, including failure to remove conditions, shall include notice that:

(a) The institution shall inform students currently admitted to a certification or rank program of the following:

1. A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial or revocation of state accreditation and who applies to the EPSB within the fifteen (15) months immediately following the denial or revocation of state accreditation shall receive the certificate or advancement in rank, and

2. A student who does not meet the criteria established in subparagraph 1 of this paragraph shall transfer to a state accredited education preparation unit in order to receive the certificate or advancement in rank; and

(b) An institution for which the EPSB has denied or revoked accreditation shall seek state accreditation through completion of the first accreditation process. The on-site accreditation visit shall be scheduled by the EPSB no earlier than two (2) years following the EPSB action to revoke or deny state accreditation.

Section 21. Revocation for Cause. (1) If an area of concern or an allegation of misconduct arises in between accreditation visits, staff shall bring a complaint to the EPSB for initial review.

(2) After review of the allegations in the complaint, the EPSB may refer the matter to the Accreditation Audit Committee for further investigation.

(3)(a) Notice of the EPSB's decision to refer to the matter and the complaint shall be sent to the institution.

(b) Within thirty (30) days of receipt of the complaint, the institution shall respond to the allegations in writing and provide evidence pertaining to the allegations in the complaint to the EPSB.

(4)(a) The Accreditation Audit Committee shall review any evidence supporting the allegations and any information provided by the institution.

(b) Upon completion of the review, the Accreditation Audit Committee shall issue a report containing one (1) of the following four (4) recommendations to the EPSB:

1 Accreditation;

2 Accreditation with conditions;

3 Accreditation with probation; or

4. Revocation of accreditation.

(5) The institution shall receive a copy of the Accreditation Audit Committee's report and may file a response to the Accreditation Audit Committee's recommendation.

(6)(a) The recommendation from the Accreditation Audit Committee and the institution's response shall be presented to the EPSB.

(b) The EPSB shall consider the findings and recommendations of the Accreditation Audit Committee and make a final determination regarding the accreditation of the educator preparation unit.

Section 22. [20-] Program Approval Action Outside the First or Regular Continuing Accreditation Cycle. (1) Approval of a program shall be through the program process established in Section 11 of this administrative regulation except that a new program not submitted during the regular accreditation cycle or a program substantially revised since submission during the accreditation process shall be submitted for approval by the EPSB prior to admission of a student to the program.

(2) For a new or substantially revised program, the EPSB shall consider a recommendation by staff, including review by the Continuous Assessment Review Committee, Content Program Review

Committee, and the Reading Committee.

(3) A recommendation made pursuant to subsection (2) of this section shall be presented to the full EPSB.

(4) Program approval decision options shall be:

(a) Approval, with the next review scheduled during the regular accreditation cycle unless a subsequent substantial revision is made,

(b) Approval with conditions, with a maximum of one (1) year probationary extension for correction of a specified problem to be documented through written materials or through an on-site visit. At the end of the extension, the EPSB shall decide that the documentation supports:

1. Approval; or
2. Denial of approval; or

(c) Denial of approval, indicating that a serious problem exists which jeopardizes the quality of preparation of school personnel.

(5) The EPSB shall order review of a program if it has cause to believe that the quality of preparation is seriously jeopardized. The review shall be conducted under the criteria and procedures established in the EPSB "Emergency Review of Certification Programs Procedure" policy incorporated by reference. The on-site review shall be conducted by EPSB staff and a Board of Examiners team. The review shall result in a report to which the institution may respond. The review report and institutional response shall be used by the Executive Director of the EPSB as the basis for a recommendation to the full EPSB for:

- (a) Approval;
- (b) Approval with conditions; or
- (c) Denial of approval for the program.

(6) If the EPSB denies approval of a program, the institution shall notify each student currently admitted to that program of the EPSB action. The notice shall include the following information

(a) A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial of state approval and who applies to the EPSB within the fifteen (15) months immediately following the denial of state approval shall receive the certification or advancement in rank; and

(b) A student who does not meet the criteria established in paragraph (a) of this subsection shall transfer to a state approved program in order to receive the certificate or advancement in rank.

Section 23. [24.] Public Disclosure. (1) After a unit and program approval decision becomes final, the EPSB shall prepare official notice of the action. The disclosure notice shall include the essential information provided in the official letter to the institution, including the decision on accreditation, program approval, standards not met, program areas for improvement, and dates of official action.

(2) The public disclosure shall be entered into the minutes of the board for the meeting in which the official action was taken by the EPSB.

(3) Thirty (30) days after the institution has received official notification of EPSB action, the EPSB shall on request provide a copy of the public disclosure notice to the Kentucky Education Association, the Council on Postsecondary Education, the Association of Independent Kentucky Colleges and Universities or other organizations or individuals.

Section 24. [22.] Appeals Process. (1) If an institution seeks appeal of a decision, the institution shall appeal within thirty (30) days of receipt of the EPSB official notification. An institution shall appeal on the grounds that:

- (a) A prescribed standard was disregarded;
- (b) A state procedure was not followed; or
- (c) Evidence of compliance in place at the time of the review and favorable to the institution was not considered.

(2) An ad hoc appeals board of no fewer than three (3) members shall be appointed by the EPSB chair from members of the Board of Examiners who have not had involvement with the team visit or a conflict of interest regarding the institution. The ad hoc committee shall recommend action on the appeal to the EPSB.

(3) The consideration of the appeal shall be in accordance with KRS Chapter 13B.

Section 25. [23.] Approval of Alternative Route to Certification Programs. (1) Alternative route programs authorized under KRS 161.028(1)(s) or (t) shall adhere to the educator preparation unit accreditation and program approval processes established in this administrative regulation and in the EPSB policy and procedure entitled "Approval of Alternative Route to Certification Program Offered Under KRS 161.028" as a condition of offering an educator certification program or program leading to a rank change.

(2) The EPSB shall consider a waiver upon request of the institution offering the alternative route program. The request shall be submitted in writing no later than thirty (30) days prior to the next regularly-scheduled EPSB meeting. In granting the waiver, the board shall consider the provisions of this administrative regulation and any information presented that supports a determination of undue restriction.

Section 26. [24.] In compliance with the Federal Title II Report Card State Guidelines established in 20 U.S.C. 1027 and 1028, the EPSB shall identify an educator preparation unit as:

(1) "At-risk of low performing" if an educator preparation program has received a:

- (a) State accreditation rating of "provisional"; or
- (b) State accreditation rating of "accreditation with conditions";

or

~~[(c) Quality Performance Index of "At-Risk of Low Performance" established in Section 25 of this administrative regulation; or]~~

(2) "Low performing" if an educator preparation program has received a[-

- (a)] state accreditation rating of "accreditation with probation";

or

~~[(b) Quality Performance Index of "Low Performance" established in Section 25 of this administrative regulation].~~

Section 27. [25.] The Education Professional Standards Board shall produce a state report card, which shall include

(1) General information on the institution and the educator preparation unit;

(2) Contact information for the person responsible for the educator preparation unit;

(3) Type or types of accreditation the unit holds;

(4) Current state accreditation status of the educator preparation unit;

(5) Year of last state accreditation visit and year of next scheduled visit;

(6) Table of the unit's approved certification program or programs;

(7) Tables relating the unit's total enrollment disaggregated by ethnicity and gender for the last three (3) years;

(8) Tables relating the unit's faculty disaggregated by the number of full-time equivalents (FTE)~~(FTE)~~, ethnicity, and gender for the last three (3) years;

(9) Table of the number of program completers (teachers and administrators) for the last three (3) years;

(10) Table relating pass rates on the required assessments;

(11) Table relating pass rates for the Kentucky Teacher Internship Program;

(12) Table relating pass rates for the Kentucky Principal Internship Program (if applicable);

(13) Table indicating student teacher satisfaction with the preparation program;

(14) Table relating teacher intern satisfaction with the preparation program;

(15) Table relating new teacher (<3 years) and supervisor satisfaction with the preparation program;

~~(16) Table aggregating quality performance indicators established in this section and the standards established in Section 2 of this administrative regulation;~~

~~(17) Hyperlinks to various supporting documents; and~~

~~(18) A Quality Performance Index (QPI) for each educator preparation unit. The Quality Performance Index shall comply with the provisions established in this subsection.~~

~~(a) The Quality Performance Index shall provide an indicator of the overall performance of the educator preparation unit.~~

~~(b) The Quality Performance Index shall be a calculation of~~

three (3) separate performance measures:

1. Annual summary PRAXIS II pass rate;
2. Overall mean score on the Kentucky Educator Preparation Program new teacher survey; and
3. Three (3) year average pass rate on the Kentucky Teacher Internship Program.

(c) 1. Performance points shall be assigned to the outcome of each of the three (3) performance measures and each multiplied by specific performance weights.

2. The sum of the product shall be divided by the sum of the performance weights.

3. The resulting quotient shall produce the Quality Performance Index.

(d) The Quality Performance Index shall be divided into four (4) performance categories:

1. A score of 4.00 to 3.50 shall indicate "Excellent Performance";

2. A score of 3.40 to 3.00 shall indicate "Satisfactory Performance";

3. A score of 2.90 to 2.75 shall indicate "At Risk of Low Performance" and shall identify the educator preparation unit as "at risk of low performing" in accordance with 20 U.S.C. 1027 and 1028 and Section 24 of this administrative regulation; and

4. A score of less than 2.75 shall indicate "Low Performance" and shall identify the educator preparation unit as "low performing" in accordance with 20 U.S.C. 1027 and 1028 and Section 24 of this administrative regulation.

(e) The performance points and performance weights are established in the "Quality Performance Index Calculation" document incorporated by reference.]

Section 28. [26.] Approval of Off-site and On-line Programs. (1) Institutions in Kentucky with educator preparation programs shall seek approval from the Education Professional Standards Board before offering courses or whole programs at an off-campus site.

(a) The institution shall submit a written request to the board to begin offering courses at the off-site location describing the location and physical attributes of the off-campus site, resources to be provided, faculty and their qualifications, and a list of courses or programs to be offered.

(b) The off-site location shall be approved by the board before the institution may begin offering courses at the location.

(2)(a) Until May 31, 2008, initial and continuing on-line educator preparation programs shall be regionally or nationally accredited and approved, as applicable, by the program's state of origin.

(b) Beginning June 1, 2008, initial and continuing on-line educator preparation programs originating from outside Kentucky shall be regionally accredited, accredited or approved, as applicable, by the program's state of origin, and accredited by NCATE.

Section 29. [27.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Professional Standards for the Accreditation of Schools, Colleges, and Departments of Education", 2002 Edition, National Council for Accreditation of Teacher Education;

(b) NCATE Unit Standards (2002 Edition), National Council for Accreditation of Teacher Education;

(c) "Education Professional Standards Board Accreditation of Preparation Programs Procedure", August 2002;

(d) "Education Professional Standards Board Approval of Alternative Route to Certification Program Offered under KRS 161.028", August 2002;

(e) "Education Professional Standards Board Emergency Review of Certification Programs Procedure", September 2003;

(f) ["Quality Performance Index Calculation", 2005 edition, Education Professional Standards Board;

(g) "Kentucky's Safety Educator Standards for Preparation and Certification", May 2004;

(h) "National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards", July 2000; and

(i) "Kentucky's Standards for Guidance Counseling Programs" derived from the Council for Accreditation of Counseling

and Related Education Programs (CACREP) Standards, Education Professional Standards Board, November 2004.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM STULL, Chairperson

Contact Person: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

# EDUCATION PROFESSIONAL STANDARDS BOARD (As Amended at ARRS, December 10, 2007)

## 16 KAR 8:022. Repeal of 16 KAR 8:021.

RELATES TO: KRS 157.390, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028

and 161.030 vest authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative regulation repeals 16 KAR 8:021, Fifth-year Program for Renewal of Teaching Certificates, which established the standards for the Fifth-year Program acceptable for certificate renewal until June 30, 2001.

Section 1. (1) Effective September 1, 1995, candidates shall not be admitted to any plan identified in this administrative regulation. Instead, candidates shall apply for admission to one (1) of the plans identified in 16 KAR 8:020.

(2) Candidates who are admitted to a plan in accordance with this administrative regulation before September 1, 1995, shall complete the program by September 1, 2000, and shall document completion of the program with the Division of Certification prior to June 30, 2001.

[Section 2. (1) The standards described in this administrative regulation shall be in keeping with one (1) or more of the following purposes:

(a) To improve the professional competency for the position covered by the initial teaching certificate;

(b) To extend the scope of professional competency to some certification area not covered by the initial certificate; and

(c) To obtain preparation certification required for professional advancement to a higher position.

(2) The preparation program required for the renewal of teaching certificates shall require completion of one (1) of the plans described in the following sections.

Section 3. The Plan I Fifth-year Program shall be the completion of a master's degree leading to a standard teaching certificate from a regionally accredited college or university or from any foreign institution recognized by its government for teacher education purposes.

Section 4. The Plan II Fifth-year Program shall be the completion of a master's degree in a professional education specialty from a regionally accredited college or university or from a foreign institution recognized by its government for teacher education purposes.

Section 5. The Plan III Fifth-year program shall be the completion of a master's degree in an academic subject identified in the teacher certification requirements as a teaching field from a regionally accredited college or university or from a foreign institution recognized by its government for teacher education purposes.

Section 6. The Plan IV Fifth-year Program shall consist of a program completed in accordance with the following guidelines:

(1) The Plan IV Fifth-year Program shall be planned individually with each applicant by the teacher education institution which

shall be an institution approved for offering programs leading to the standard teaching certificate.

(2) The Plan IV Fifth-year Program shall consist of thirty-two (32) semester hours of credit earned above and beyond the bachelor's degree and the four (4) year program of preparation required for a provisional certificate, except that persons who complete a mandated dual certification program shall be allowed to count toward the Plan IV Fifth-year Program those credits in the second certification area which are beyond those required for a bachelor's degree and certification in the first area.

(3) The academic standing for the thirty-two (32) semester hour program shall be no less than is required at the planning institution for the teacher education graduates. The total program shall include;

(a) At least eighteen (18) semester hours earned at the planning institution;

(b) At least twelve (12) semester hours of graduate-level course work;

(c) At least twelve (12) semester hours of professional education; and

(d) At least twelve (12) semester hours from the area of the teacher's specialization.

(4) Once the Plan IV Fifth-year Program has been planned with the individual, the planning institution may authorize in advance the completion of a maximum of six (6) semester hours of the program at a senior college.

(5) Course work earned by the applicant prior to planning the Fifth-year Program may be evaluated for acceptance by the planning institution.

(6) Credit earned by correspondence shall not apply toward the Plan IV Fifth-year Program.

Section 7. (1) The Plan V Fifth-year Program shall follow the same guidelines as for the Plan IV Fifth-year Program described in Section 6 of this administrative regulation except for the modifications described and permitted in this section.

(2) The Plan V Fifth-year Program shall include thirty-two (32) semester hours of credit, except that continuing education units (CEU) or professional staff development units (PSDU) may be substituted under an equivalent formula for up to twelve (12) semester hours of the total program.

(3) The college credits shall include twelve (12) semester hours in professional education and six (6) semester hours from the area of the teacher's specialization.

(4) At least eighteen (18) semester hours of credit shall be earned at the planning institution.

(5) Twelve (12) semester hours of the total program shall be for graduate-level credit.

(6) The Plan V Fifth-year Program shall be planned by the teacher education institution individually with each applicant in terms of the position held by the applicant or in terms of a position anticipated by the applicant. Standard college credits earned by the applicant prior to planning the program shall be evaluated for possible acceptance by the planning institution; however, all preparation recorded as continuing education units or as professional staff development units shall be included as a component of applicant's planned program as approved in advance for acceptance as a part of the Plan V Fifth-year Program.

(7) The grade point standing for the college credit portion of the Plan V Fifth-year Program shall be no less than that required at the planning institution for teacher education graduates.

(8) The planning institution may authorize in advance the completion of a maximum of six (6) semester hours of the program at a senior college.

(9) Credit earned by correspondence shall not apply toward the Plan V Fifth-year Program.

(10) The continuing education unit as used in the Plan V Fifth-year Program shall be the continuing education unit now in use by accredited colleges and universities and shall include ten (10) contact clock hours of participation in an organized professional experience under responsible sponsorship, capable direction, and qualified instruction. For purposes of the Plan V Fifth-year Program the studies and experiences for continuing education units shall be planned in advance to insure relevance to the total program being

planned with the applicant. For purposes of the Plan V Fifth-year Program two (2) continuing education units shall be applied on the same basis as one (1) semester hour of college credit.

(11) The professional staff development unit as used in the Plan V Fifth-year Program shall be awarded for participation in short-term workshops organized by the local school district or by the State Department of Education and shall require a minimum of ten (10) contact clock hours of participation for each unit. For purposes of the Plan V Fifth-year Program two (2) professional staff development units shall be applied on the same basis as one (1) semester hour of college credit. For this purpose the local district in-service education committee established under 704 KAR 3:035 shall approve in advance the local district workshops that are to be offered for professional staff development units on the basis of the following criteria:

(a) There is an assessment of educational need based upon input from the persons who are to be participants in the workshop activity;

(b) There is a statement of objectives relating to the assessment;

(c) The workshop activities and the study materials are appropriate to the attainment of the objectives. Participants shall have input into the design of the workshop;

(d) The instructor has appropriate expertise for the nature of the workshop; and

(e) Appropriate records are prepared using forms authorized by the State Department of Education. Each participant shall be given an individual record of PSDU's granted.]

TOM STULL, Chairperson

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

**FINANCE AND ADMINISTRATION CABINET**  
**Department of Revenue**  
**Office of Tax Increment Financing**  
**(As Amended at ARRS, December 10, 2007)**

**103 KAR 50:020. Application for state participation in tax increment financing projects.**

RELATES TO: KRS 65.7045, 65.7073, 65.7075, 65.7083 [KRS 65.7073, KRS 65.7075 and KRS 65.7083]

STATUTORY AUTHORITY: KRS 65.7071(2)(a)3.b i.; KRS 65.7071(2)(b)

NECESSITY, FUNCTION AND CONFORMITY: KRS 65.7071(2)(b) provides that the Division [Office] of Tax Increment Financing shall establish standards and requirements for the application process for the state's tax increment financing participation programs. This administrative regulation sets forth the required application process by which a city, county or agency may seek state participation of tax increment financing in a project.

Section 1. Definitions. (1) "Agency" is defined by [has the same meaning as in] KRS 65.7045(2).

(2) "City" is defined by [has the same meaning as in] KRS 65.7045(7).

(3) "Commonwealth" is defined by [has the same meaning as in] KRS 65.7045(10).

(4) "County" is defined by [has the same meaning as in] KRS 65.7045(11).

(5) "Office" is defined by [has the same meaning as in] KRS 65.7045(29).

(6) "Project" is defined by [has the same meaning as in] KRS 65.7045(33).

Section 2. Application Process. A city, county or agency submitting [may submit] an application to the office requesting that the Commonwealth participate in a project. The city, county, or agency shall file an original and one copy of the appropriate application form for the program requested and all required attachments.

Section 3. Application Forms. (1) A city, county or agency seeking participation from the Commonwealth under the Commonwealth Participation Program for State Real Property Ad Valorem Tax Revenues shall file the "Application for the Commonwealth Participation Program for State Real Property Tax Revenues" with all required attachments and information.

(2) A city, county, or agency seeking participation from the Commonwealth under the Signature Project Program prior to January 1, 2008 shall file the "Application for the Signature Project Program - 2007" with all required attachments and information.

(3) A city, county, or agency seeking participation from the Commonwealth under the Signature Project Program on or after January 1, 2008 shall file the "Application for the Signature Project Program" with all required attachments and information.

(4) A city, county, or agency seeking participation from the Commonwealth under the Commonwealth Participation Program for Mixed Use Redevelopment in Blighted Urban Areas [Program] shall file the "Application for the Commonwealth Participation Program for Mixed Use [State] Redevelopment in Blighted Urban Areas" with all required attachments and information.

Section 4. Written Determination. The office shall provide its written determination required by KRS 65.7071(2)(a)2. to the applicant based upon:

(1) The applicant's satisfaction of the applicable statutory requirements of KRS 65.7041 through 65.7083;

(2) The application submitted to the office under Section 2 of this administrative regulation;

(3) Written and oral communications with the applicant;

(4) Independent analysis by[~~of~~] the office based upon publicly available information; and

(5) If applicable, the findings of the independent consultant's report or the financial adviser's report required by KRS 65.7071(2)(a)3, b.1. and (6)

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for the Signature Project Program - 2007", October 2007 [(07/07)]

(b) "Application for the Commonwealth Participation Program for State Real Property Ad Valorem Tax Revenues", October 2007 [(07/07)]

(c) "Application for the Commonwealth Participation Program for Mixed Use Redevelopment in Blighted Urban Areas", October 2007; and [(07/07)]

(d) "Application for the Signature Project Program", October 2007, [(07/07)]

(2) This material [A copy of these documents] may be inspected, copied, or obtained, subject to applicable copyright law, at the Division[~~from the Office~~] of Tax Increment Financing, Department of Revenue, 200 Fair Oaks Lane, [~~from 8 a.m. to 4:30 p.m.~~] Monday through Friday, 8 a.m. to 4:30 p.m.

MIKE BURNSIDE, Secretary

CONTACT PERSON: Angela Robinson, Finance and Administration Cabinet, 702 Capitol Avenue, Room 195-B, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-3894.

FINANCE AND ADMINISTRATION CABINET  
State Tax Increment Financing Commission  
(As Amended at ARRS, December 10, 2007)

103 KAR 50:030. Commercially reasonable limits on financing costs.

RELATES TO: KRS 65.7045, 65.7071, 65.7075, 65.7079, 65.7081 [65.7041 through KRS 65.7083]

STATUTORY AUTHORITY: KRS 65.7071(3)(b) [-]

NECESSITY FUNCTION AND CONFORMITY: KRS 65.7071(3)(b) requires the State Tax Increment Financing Commission to establish commercially reasonable limits on financing costs that may be recovered pursuant to KRS 65.7075. This ad-

ministrative regulation establishes the commercially reasonable limits.

Section 1. Definitions. (1) "Commercially reasonable" means financing costs at terms comparable to an arm's length transaction, not to exceed The Bond Buyer 25 Revenue Muni Bond Index in effect as of the date established in the project grant agreement, plus three (3) percent.

(2) "Financing costs" is defined by[~~has the same meaning as in~~] KRS 65.7045(17).

(3) "Recent general market revenue bond transactions" means a bond or similar debt obligation issued;

(a) By a governmental entity for the purpose of financing public improvements from which the revenues derived from the improvements will be used to retire[~~retired~~] the associated obligation; and

(b) [~~The bond or similar debt obligation shall be issued~~] Within sixty days of the financing for the project with[~~and~~] the terms (ratings, tax status, maturities, prices, yields and redemption provisions) of the financing [~~shall be~~] publicly available.

Section 2. Proof of Commercially Reasonable Financing Costs. An applicant requesting the Commonwealth's participation in a signature project program shall establish that the financing costs for which recovery is sought under the project grant agreement are commercially reasonable.

(1) If there are actual comparable financing transactions, the financing costs for the actual comparable financing transactions shall be submitted by the applicant and considered by the commission.

(2) If there are no actual comparable financing transactions, the two (2) primary factors the commission shall consider when determining whether the financing costs are commercially reasonable shall be:

(a) The degree of comparability between the financing costs for the project and recent general market revenue bond transactions; and

(b) The quality of the data and assumptions used to explain the differential between the proposed financing costs and the recent general market revenue bond transactions used in paragraph (a) of this subsection[~~above~~].

Section 3. Commercially Reasonable Limits. Only those financing costs that are determined by the commission to be commercially reasonable and that are approved by the commission may be recovered by the applicant. Financing costs not approved by the commission, or that are beyond those determined by the commission to be commercially reasonable, shall not be recoverable.

ROBERT M. BURNSIDE, Chair

CONTACT PERSON: Angela Robinson, Finance and Administration Cabinet, 702 Capitol Avenue, Room 195-B, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-3894.

FINANCE AND ADMINISTRATION CABINET  
State Tax Increment Financing Commission  
(As Amended at ARRS, December 10, 2007)

103 KAR 50:040. General Administration.

RELATES TO: KRS 65.7045, 65.7073, 65.7075, 65.7077 [65.7041-KRS 65.7083]

STATUTORY AUTHORITY: KRS 65.7069(8)

NECESSITY, FUNCTION AND CONFORMITY: KRS 65.7069(8) authorizes the State Tax Increment Financing Commission to promulgate administrative[~~any~~] regulations necessary for the administration of the statutes relating to tax increment financing, specifically KRS 65.7069 through[-] 65.7081. These statutes establish [~~clarify~~] various criteria that a project shall[~~must~~] satisfy in order to obtain state participation through a project grant agreement. This administrative regulation establishes the criteria for determining a project footprint and land preparation, demolition, and clearance requirements.

Section 1. Definitions. (1) "Capital investment" is defined

~~by~~ [has the same meaning as in] KRS 65.7045(6).

(2) "Commission" ~~is defined by~~ [has the same meaning as in] KRS 65.7045(9).

(3) "Commonwealth" ~~is defined by~~ [has the same meaning as in] KRS 65.7045(10).

(4) "Commonwealth participation programs" means the programs ~~established by~~ [described in] KRS 65.7073, 65.7075, and 65.7077.

(5) "Footprint" ~~is defined by~~ [has the same meaning as in] KRS 65.7045(18).

(6) "Incremental revenues" ~~is defined by~~ [has the same meaning as in] KRS 65.7045(21).

(7) Minimum capital investment" means the capital investment requirement established for the Commonwealth participation programs ~~in KRS 65.7073, 65.7075 and 65.7077.~~

(8) "Project" ~~is defined by~~ [has the same meaning as in] KRS 65.7045(33).

(9) "Project grant agreement" ~~is defined by~~ [has the same meaning as in] KRS 65.7045(34).

(10) "Purely private development" means a project that does not include either approved public infrastructure costs or approved signature project costs as an integral component of the project.

**Section 2. Criteria For Determining A Project Footprint. ~~In accordance with KRS 65.7073(6), 65.7075(5), and 65.7077(8), for each project approved for incentives, the commission shall determine the footprint, including both:~~**

~~(a) [The commission is required by the provisions of KRS 65.7073(6), 65.7075(5), and 65.7077(8) to determine the footprint of each project it approves for incentives. The project footprint is] The area within which the minimum capital investment required for the Commonwealth participation programs **shall be made; and**~~

~~(b) [must be made. The project footprint is also] The area within which incremental revenues may be recovered from the Commonwealth.~~

~~(2) [(1)(a)]~~ Minimum capital investment.

~~(a)~~ For an area to be included as part of the project footprint, actual capital investment shall be made in the area.

~~(b)~~ Each proposed project shall meet minimum investment requirements to qualify for state participation.

~~(c)~~ In determining the footprint of a proposed project, the commission shall consider the concentration and source of capital investment throughout the proposed footprint and the related nature of proposed capital investments to ensure that:

1. Unrelated projects are not combined into one footprint to meet minimum investment requirements; and

2. Purely private development is not combined with independent, purely public infrastructure development that would have likely occurred without incentives for the purpose of creating a source of recovery for the private development.

~~(d) [(b)]~~ In making this determination of a discrete footprint, the commission shall consider whether:

1. The proposed capital investments and areas included in the proposed footprint have a common thematic linkage, other than general economic development, between or among the discrete items of capital investment that has been centrally managed or coordinated to result in a unified economic impact; and

2. The project[,] taken in its entirety would not be feasible or complete without any of the discrete items of capital investment that are aggregated as part of the proposed footprint.

~~(3) [(2)]~~ Incremental revenues.

~~(a)~~ For revenues to be included as incremental revenues, the taxable activity shall occur within the footprint, and the new revenues shall be reasonably and directly related to the capital investments made.

~~(b)~~ The purpose of tax increment financing ~~shall be~~ [is] to allow for the pledge of revenues generated through capital improvements to support the development of those capital improvements.

~~(c) [Therefore,]~~ In pledging incremental revenues, the commission shall:

1. Consider whether proposed capital improvements will reasonably result in increased revenues; ~~and~~

2. [, and shall] Pledge only those incremental revenues that it determines are reasonably generated as a result of the proposed

capital investment.

~~(d) [If/When]~~ determining whether a capital investment in an existing structure rises to the level of significance for the entire structure to be included in increment calculations, the Commission shall consider ~~the following items~~ [any or all of the following guidelines]:

1. [(a)] If improvements to an existing structure fundamentally and profoundly rehabilitate or otherwise re-establish the existing structure as a viable source of economic activity, [then] the so-affected portions of the existing structure where the capital investments occurred ~~shall~~ [may] be considered;

2. [(b)] If the improvements to an existing structure are isolated to a discrete floor, wing, room, or any other meaningful partition of an existing structure, [then] only the affected or renovated partition or partitions ~~shall~~ [may] be considered for purposes of inclusion in the incremental revenue calculations; and

3. [(c)] If improvements to an existing structure are limited to sidewalks, street lights, parking expansions, landscaping, or any other improvements to the exterior of an existing structure, [then] immediate proximity to these improvements shall not be sufficient to include taxable activity taking place within an existing structure in incremental revenue calculations for the project. These capital improvements ~~shall~~ [may, however,] be counted toward the capital investment of the project.

**Section 3. [2.] Land Preparation.** (1) "Land preparation, including demolition and clearance work," as that term is used in KRS 65.7045(3)(a), ~~shall include~~ [means] the costs attributable to preparing the public infrastructure portion of the footprint for development, and ~~shall~~ [does] not include land acquisition costs.

(2) "Land preparation, demolition and clearance," as that term is used in KRS 65.7077(2), ~~shall include~~ [means] the costs attributable to preparing the footprint, other than the public infrastructure portion of the footprint, for development and ~~shall~~ [does] not include land acquisition costs.

MIKE BURNSIDE, Chair

CONTACT PERSON: Angela Robinson, Finance and Administration Cabinet, 702 Capitol Avenue, Room 195-B, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-3894.



GENERAL GOVERNMENT CABINET  
Kentucky Board of Pharmacy  
(As Amended at ARRS, December 10, 2007)

201 KAR 2:040. Registration of pharmacist interns.

RELATES TO: KRS 315.010(16), 315.020(3), (4), 315.050(4), (5), 315.191(1)(h)

STATUTORY AUTHORITY: KRS 315.050(4), (5), 315.191(1)(a), (h)

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Board of Pharmacy is required by KRS 315.050(4) to establish standards for pharmacy intern certification. KRS 315.191(1)(h) authorizes the board to establish an apprentice program for training, qualifications, and registration of applicants for registration of pharmacist interns. This administrative regulation establishes the standards for training, qualifications, and registration of pharmacist interns.

Section 1. Definitions. (1) "Academic experience program" means a course or series of courses taken by a pharmacist intern at a school or college of pharmacy approved by the board that involves actual practice of pharmacy experiences.

(2) "Preceptor" means the pharmacist who is responsible to the board for the practice of pharmacy experiences of a pharmacist intern.

Section 2. (1) An applicant for registration as a pharmacist intern shall register with the board by filing an "Application for Registration as a Pharmacist Intern" form with the board. The applicant shall attach a recent head and shoulders photograph, that is not a proof copy or plastic identification.

(2) Prior to registration, an applicant shall have:

- (a) Been accepted by a college or school of pharmacy approved by the board; and
- (b) Submitted proof of acceptance by a college or school of pharmacy approved by the board.

Section 3. (1) An applicant for examination for licensure as a pharmacist shall have completed 1,500 hours of internship.

(2) Credit for internship shall be awarded for hours worked in a pharmacy or in related research during the time the pharmacist intern is completing the academic coursework. Credit shall not be awarded for hours worked in a pharmacy or in related research during the period the pharmacist intern is completing clinical rotations.

(3) Credit for internship shall be limited to:

- (a) Forty-eight (48) hours per week if the pharmacist intern is not actively enrolled in a college or school of pharmacy;
- (b) Twenty (20) hours per week if the pharmacy intern is actively enrolled in a college or school of pharmacy. The maximum credit allowed for this enrolled time shall be 500 hours.

(4)(a) Credit shall be given for the following forms of internship:

1. Completion of an academic experience program;
2. Work performed in a pharmacy under the supervision of a preceptor; or

3. Work or research related to the practice of pharmacy that was performed under the supervision of a preceptor for a government body, college or university, pharmacy business, or other entity if the pharmacist intern has received prior approval by the board. The maximum credit allowed for this time shall be 400 hours.

(b) An internship performed outside of Kentucky shall be credited if the:

1. Requirements for internship in that state are at least equivalent to the requirements established in this administrative regulation; and
2. Board of licensure in that state has certified that the preceptor, pharmacy, government body, college or university, pharmaceutical business, or other entity is in good standing.

(5) Credit shall not be awarded for internship completed prior to registration with the board.

Section 4. (1) A pharmacist intern shall be issued a "Registration Identification Card".

(2) A pharmacist intern shall:

- (a) Carry the "Registration Identification Card" when on duty; and
- (b) Show it upon request to a member of the board or its authorized agent.

Section 5. (1)(a) Except as provided by paragraph (b) of this subsection, the registration of a pharmacist intern shall be revoked if the pharmacist intern is not:

1. Currently enrolled in a college or school of pharmacy approved by the board;
2. A current applicant for licensure as a pharmacist in Kentucky; or
3. Awaiting the results of an examination.

(b) The registration of a pharmacist intern shall not be revoked when the intern is not currently enrolled in a college or school of pharmacy approved by the board if the board finds that:

1. The intern is on a semester break; or
2. Personal or family health concerns or other reasons beyond the control of the pharmacist intern that necessitates a temporary absence from enrollment.

(2) A person who is not registered as a pharmacist intern shall not:

- (a) Hold himself out as a pharmacist intern; or
- (b) Perform the duties of a pharmacist intern.

Section 6. ~~[(1) Until July 31, 2000, a preceptor shall be a pharmacist who has been licensed by the board for at least one (1) year.]~~

~~(1) A [(2)]~~ beginning August 1, 2000, a preceptor shall be a pharmacist who:

(a) Has been licensed by the board for at least one (1) year; and

1. Is a community-based faculty member of a ~~the~~ college or school of Pharmacy approved by the board ~~[of the University of Kentucky]; or~~

2. Meets the standards established by a ~~the~~ college or school of Pharmacy approved by the board ~~[of the University of Kentucky]~~ for a community-based faculty member.

~~[(2)](3)~~ A preceptor shall be actively engaged in the practice of pharmacy in the location where the pharmacist intern performs his internship.

~~[(3)](4)~~ The preceptor shall supervise only one (1) pharmacist intern at a time for the purpose of the intern obtaining credit for the practice of pharmacy experience, unless the pharmacist is supervising interns as a faculty member at a school or college pharmacy approved by the board during an academic experience program.

Section 7. (1) Within ten (10) days of beginning an internship, a pharmacist intern shall submit a "Pharmacist Preceptor's Affidavit".

(2) On or before October 1 of each year of an internship, a pharmacist intern shall submit an "Internship Report". A pharmacist intern who performs work or research related to the practice of pharmacy that was performed under the supervision of a preceptor for a government body, college or university, pharmaceutical business, or other entity shall also file an essay of at least 500 words describing the work or research experience and the relation of the work or research to the practice of pharmacy.

(3) An academic experience program shall be reported on an "Academic Experience Affidavit, Form IV" which shall be filed with the board upon completion of the academic experience program or prior to certification for examination.

Section 8. Credit for Academic Experience Programs. ~~[(1) The maximum number of hours of internship credit for completion of an academic experience program shall be:~~

- ~~(a) 710 hours for a Bachelor of Science in Pharmacy; or~~
- ~~(b) 960 hours for a Doctor of Pharmacy.]~~

~~[(1)](2)~~ For a Doctor of Pharmacy degree ~~[received after January 1, 2004]~~, credit shall be awarded for each hour of successful completion of an academic experience program at a col-



lege or school of pharmacy approved by the board.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Registration as a Pharmacist Intern Form 1 (5/99);
- (b) "Registration Identification Card";
- (c) "Pharmacist Preceptor's Affidavit Form 2 (5/99)";
- (d) "Internship Report form (9/99)"; and
- (e) "Academic Experience Affidavit, Form IV (5/99)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, Spindletop Administrative Building, Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. [(2) This material may be inspected, copied, or obtained at the Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, Monday through Friday, 8 a.m. to 4:30 p.m.]

PETER ORZALI, JR, President

APPROVED BY AGENCY: October 9, 2007

FILED WITH LRC: October 11, 2007 at 8 a.m.

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#### GENERAL GOVERNMENT CABINET

Kentucky State Board of Licensure for Professional Engineers and Land Surveyors

(As Amended at ARRS, December 10, 2007)

#### 201 KAR 18:040. Fees.

RELATES TO: KRS 322.060, 322.090, 322.100, 322.110, 322.120, 322.160, 322.170

STATUTORY AUTHORITY: KRS 322.090, 322.100, 322.110, 322.120, 322.290(4), 322.290(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.100 gives the board the authority to set license fees. This administrative regulation establishes fees for examination, licensure, reinstatement, [verification], reissuance, and renewal.

Section 1. Examination Fees. (1) The fees for taking the Principles and Practice of Engineering Examination, the Principles and Practice of Land Surveying Examination, the Fundamentals of Engineering Examination, the Fundamentals of Land Surveying Examination, and the Structural II Examination shall be the actual amounts charged by the National Council of Examiners for Engineering and Surveying.

(2) The board shall reimburse examination fees for successfully completing:

(a) Any examination listed in subsection (1) for active members or veterans of the Armed Forces of the United States. Application for reimbursement shall be made in writing to the board and include proof of passing the examination and of service in the Armed Forces of the United States.

(b) The Fundamentals of Engineering Examination or the Fundamentals of Surveying Examination for students currently enrolled in a Kentucky university or college on the date the examination was taken. Application for reimbursement shall be made in writing to the board and include proof of passing the examination and of enrollment in a Kentucky university or college on the date the examination was taken.

Section 2. [Initial Licensure,] Reciprocity, Renewal, Reinstatement and [;] Reissuance [and Verification Fees]. (1) [Verification of licensure is ten (10) dollars.

(2) Renewal of an individual license is \$150 and is twenty (20) dollars for retired or inactive status

(a) Licensees whose surnames begin with the letters A through K shall renew in odd-numbered years.

(b) Licensees whose surnames begin with the letters L through

Z shall renew in even-numbered years.

(2) [(3)] (a) The fee for reinstatement of an expired license or business entity permit that has been expired for less than one (1) year shall be calculated as provided by KRS 322.160 (3).

(b) If the license or business entity permit has been expired for more than one (1) year, the former licensee or business entity shall file an application for reinstatement and pay a fee of \$500.

(3) [(4)] Reissuance of a license after loss or destruction is twenty-five (25) dollars.

(4) [(5)] The fee for licensure by reciprocity as a professional engineer or professional land surveyor shall be \$300. The fee shall accompany the application for licensure.

(5) [(6)] (a) Applicants whose surnames begin with the letters A through K who are initially licensed in:

1. An even-numbered year shall not pay an initial license fee; or

2. An odd-numbered year shall pay an initial license fee of seventy-five (75) dollars.

(b) Applicants whose surnames begin with the letters L through Z who are initially licensed in:

1. An odd-numbered year shall not pay an initial license fee; or

2. An even-numbered year shall pay an initial license fee of seventy-five (75) dollars.

(7) An applicant who fails the two (2) hour state specific examination on the first attempt shall be charged fifty (50) dollars for each subsequent attempt.

Section 3. Fees for Examination and Licensure in Additional Disciplines. (1) After initial licensure, a licensee may apply for examination in one (1) or more disciplines of engineering for which he has not been licensed.

(2) For each discipline of engineering he shall submit an:

(a) Updated application; and

(b) Examination fee as specified in this administrative regulation.

[(3) Upon successful completion of an examination, he shall submit ten (10) dollars for each addition of a new discipline.]

Section 4. Business Entities. (1) The fee for a permit to practice engineering or land surveying in this state shall be \$100 for either permit.

(2) A business entity which applies for a dual permit shall submit \$150.

(3) These fees shall accompany the application.

(4) The annual renewal fee for an individual permit shall be \$100.

(5) The annual renewal fee for a dual permit shall be \$150.

Section 5. Payment of Fees. (1) (a) Fees payable under Section 2 of this administrative regulation shall be paid by check or money order made payable to "Kentucky Board of Licensure".

(b) Fees payable under Section 1 of this administrative regulation shall be paid directly to the examination service.

(2) All fees are nonrefundable.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure to Practice Professional Engineering (1999)";

(b) "Application for Licensure to Practice Professional Land Surveying (2000)";

(c) "Professional Reference Form (2000)"; and

(d) "Report of Professional Experience (2000)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday, or by downloading from the board's web page at <http://kyboels.ky.gov/state-ky-us>.

B DAVID COX, Executive Director

APPROVED BY AGENCY: October 15, 2007

FILED WITH LRC: October 15, 2007 at noon

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**GENERAL GOVERNMENT CABINET**  
**Kentucky State Board of Licensure for Professional Engineers**  
**and Land Surveyors**  
**(As Amended at ARRS, December 10, 2007)**

**201 KAR 18:072. Experience.**

RELATES TO: KRS 322.040, 322.045, 322.047  
STATUTORY AUTHORITY: KRS 322.010, 322.040,  
322.045(3), 322.047(2), 322.290(4)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS  
322.040(4), 322.045(3), and 322.047(2) [(3)] provides that the  
board shall promulgate administrative regulations to establish re-  
quirements for consideration of experience gained prior to gradua-  
tion from programs as described in the statute. This administrative  
regulation establishes these requirements.

Section 1. Evaluation of experience in engineering required  
under KRS 322.040 shall consider the following:

(1) Experience shall reflect increasing complexity of the en-  
gineering tasks and the progressive responsibility of the applicant.

(2) The applicant shall demonstrate knowledge of engineering  
mathematics, physical and applied sciences, properties of materi-  
als, the fundamental principles of engineering design and the ap-  
plication of engineering principles in the solution of engineering  
problems.

(3) ~~A maximum of six (6) months of credit may be approved  
for experience completed prior to graduation under KRS 322.040,  
(1)(a)1-1. One (1) year of credit may be approved for completion of  
a master's degree in engineering in an EAC/ABET-accredited pro-  
gram, or one deemed equivalent by the board. [Credit shall not be  
granted for both experiences set out in this subsection.]~~

(4) Experience that violates KRS Chapter 322 shall not be  
approved.

(5) Engineering experience gained in the military services may  
be approved.

(6) Sales experience may be approved if engineering principles  
were required and used in that experience.

(7) Experience gained in teaching advanced-level engineering-  
related courses in a four (4) year EAC/ABET-accredited program,  
or one (1) deemed equivalent by the board, may be approved.

(8) Experience gained in engineering research and design  
projects by faculty in an EAC/ABET-accredited program, or one  
deemed equivalent by the board, may be approved.

(9) Experience may be approved for execution or supervision  
of construction projects designed by a professional engineer.

(10) The applicant shall demonstrate why experience not  
gained under the supervision of a professional engineer is eligible  
for credit.

(11) Qualifying experience shall be complete at the time of  
application for licensure.

Section 2. Evaluation of experience in land surveying required  
under KRS 322.045 and 322.047 shall consider the following:

(1) Land surveying experience shall reflect increasing complex-  
ity of the land surveying tasks and the progressive responsibility of  
the applicant.

(2) Experience shall include projects in which the applicant,  
while under the direct supervision of a practicing professional land  
surveyor, implemented work involving property conveyance and  
property boundary determination. The applicant shall also demon-  
strate experience in the fieldwork aspects of property boundary  
determination.

(3) One (1) year of experience may be approved for completion  
of a master's degree in land surveying from a board-approved  
program in land surveying from a college or university.

(4) A maximum of two (2) years of experience shall be ap-  
proved for land surveying work prior to graduation under KRS

322.045(1)(c)1, 2, 3, and 322.047(1)(a)1 and 2.

(5) Experience that violates KRS Chapter 322 shall not be  
approved

(6) Land surveying experience gained in the military services  
may be approved.

(7) A maximum of two (2) years of experience may be ap-  
proved for teaching land surveying courses at the postsecondary  
level.

(8) Qualifying experience shall be complete at the time of ap-  
plication.

(9) Notwithstanding subsections[paragraphs] (3), (4), and (7),  
in no case shall an applicant's experience gained after graduation  
be less than two (2) years.

B. DAVID COX, Executive Director

APPROVED BY AGENCY: October 10, 2007

FILED WITH LRC: October 15, 2007 at noon

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**GENERAL GOVERNMENT CABINET**  
**Kentucky State Board of Licensure for Professional Engineers**  
**and Land Surveyors**  
**(As Amended at ARRS, December 10, 2007)**

**201 KAR 18:196. Continuing professional development for  
engineers.**

RELATES TO: KRS 322.290(16)

STATUTORY AUTHORITY: KRS [322.290(4),] 322.290(16)

NECESSITY, FUNCTION, AND CONFORMITY: KRS  
322.290(16) requires the board to adopt a program of continuing  
education for professional engineers. This administrative regulation  
implements the continuing professional development program  
mandated by KRS 322.290(16) for professional engineers.

Section 1. Definitions. (1) "Continuing professional develop-  
ment" (CPD) means participation in activities beyond the basic  
educational requirements that;

(a) Provide specific content to improve the professional engi-  
neer's competence;

(b) Encourage acquisition of new skills and knowledge required  
to maintain competence;

(c) Strengthen the professional engineer's critical inquiry and  
balanced judgment;

(d) Raise the ethical standards within the professional commu-  
nity; and

(e) Which meet the requirements established by the provisions  
of this administrative regulation.

(2) "Dual licensee" means a person licensed as both a  
professional engineer and a professional land surveyor.

(3) "Licensee" means a person licensed as a professional en-  
gineer.

(4) "Professional development hour" or "PDH" means not  
less than fifty (50) minutes of instruction or presentation that  
meets the requirements of this administrative regulation.

(5) "Reporting period" means the two (2) calendar years  
preceding the June 30 deadline for renewal of license.

[(2) "Professional development hour" or "PDH" means not less  
than fifty (50) minutes of instruction or presentation that meets the  
requirements of this administrative regulation.

(3) "Reporting period" means the two (2) calendar years pre-  
ceding the June 30 deadline for renewal of license.

—(4) "Licensee" means a person licensed as a professional  
engineer.

(5) "Dual licensee" means a person licensed as both a profes-  
sional engineer and a professional land surveyor.]

Section 2. Program Structure (1) Except as provided in Sec-  
tion 6 of this administrative regulation, a licensee shall complete a  
minimum of thirty (30) PDH units each reporting period.

(2) If a licensee exceeds the requirement, a maximum of fifteen (15) PDH units may be carried forward to the next reporting period.

(3) PDH units earned by a dual licensee under this administrative regulation may also be used to meet the land surveyor requirements under 201 KAR 18.192 if the [such] PDH units meet the requirements of that administrative regulation.

(4) Failure to earn the required PDH units shall constitute unprofessional conduct.

Section 3. Criteria for Professional Development. (1) Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of the professional engineer.

(2) PDH units may be earned by successful completion of the following activities:

(a) Engineering educational programs or activities not requiring board audit review. An educational program from any of the following providers shall be deemed to be relevant to the practice of engineering and shall be approved without further review by the board if the program is an engineering educational program sponsored or approved by:

1. A provider included on the National Council of Examiners for Engineering and Surveying's (NCEES) Registered Continuing Education Providers Program; or

2. The National Society for Professional Engineers, or any of its affiliated state associations; or

3. Any university or college with an ABET accredited engineering program;

(b) Engineering educational programs or activities subject to board audit review, which programs or activities meet the criteria of "Continuing professional development" as that term is defined in Section 1 of this administrative regulation, and fall into one (1) or more of the following categories: [PDH units may be earned by successful completion of the following activities:]

1. (a) College courses;

2. (b) Continuing education courses;

3. (c) Correspondence, televised, videotaped, distance learning, and other short courses/tutorials;

4. (d) Presenting or attending [qualifying] seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences;

5. (e) Teaching or instructing in paragraphs (a) through (d) of this subsection;

6. (f) Authoring published papers, articles, books, or accepted licensing examination items;

7. (g) Active participation in professional or technical societies as authorized in Section 4(7); or

8. (h) Patents;

(2) In order to qualify for credit, activities [Activities] described in subsection (1) of this section shall:

(a) Be relevant to the practice of engineering;

(b) Contain technical, ethical, or managerial subjects;

(c) Be an organized program of learning;

(d) Be conducted by individuals with education, training, or expertise; and

(e) Not include in-service training, orientation to specific institutional policies and practices, or time used to sell or advertise a product

(3) CPD activities shall earn credit only when substantially different from a course for which credit was granted in the previous two (2) calendar years.

(4) PDH units shall be converted as follows:

(a) One university semester hour shall equal forty-five (45) PDH units.

(b) One university quarter hour shall equal thirty (30) PDH units.

[(c) One continuing education unit shall equal ten (10) PDH units.]

[(d) For teaching any activity in Section 3(1), multiply the number of PDH units earned by participants for that activity by two (2); apply a multiple of two (2).]

[(e) Each published paper, article, or book shall equal ten (10) PDH units.]

[(f) Active participation in professional or technical society

shall equal two (2) PDH units for each organization.

[(g) Each patent shall equal ten (10) PDH units.]

Section 4. Determination of Credit. [(1) The board has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit.]

[(1) (2)] Credit for college or university courses shall [will] be based upon course credit established by the college or university.

[(2) (3)] Credit for qualifying seminars and workshops shall [will] be based upon one (1) PDH for each fifty (50) minutes of instruction or presentation.

—[(3) (4)] Attendance at qualifying programs presented at professional or and/or technical society meetings shall [will] earn PDH units for the actual time of each program.

[(4) (5)] Credit for correspondence, televised, videotaped, distance learning, and other short courses or tutorials shall [courses/tutorials will] be the equivalent PDH units recommended by the program author subject to board review.

[(5) (6)] Teaching credit shall be [is] valid for teaching a course or seminar for the first time only.

[(6) (7)] Credit for active participation in professional or technical societies shall require [requires] that the licensee serve as an officer [or actively participate in a] committee chair of the organization. PDH units shall not be [are not] earned until the end of each year of service is completed.

Section 5. Recordkeeping (1) The licensee shall be [is] responsible for maintaining records used to support PDH units claimed. Records required include [but are not limited to]:

(a) A log showing the date of the activity, sponsoring organization, location, activity title, description, presenter's name, and PDH units earned; and

(b) Attendance certification records in the form of completion certificates or other documents supporting evidence of attendance.

Section 6. Exemptions and Extensions. (1) A licensee shall be exempted for the calendar year in which initially licensed by the board

(2) An individual who has [Individuals who have] selected inactive or retired status shall be [are] exempt from the requirements of this administrative regulation.

(3) A licensee who cannot satisfy the CPD requirement because of physical disability, illness, or other extenuating circumstance may be exempted for the reporting period in which the disability, illness, or extenuating circumstance occurs.

(4) The board may grant an extension of time to fulfill the CPD requirement for an extenuating circumstance.

(5) An exemption or extension request shall be made in writing with supporting documentation.

Section 7. Reinstatement. Before a license is reinstated by the board, a former licensee shall earn the PDH units required for each reporting period the license was revoked, suspended, or expired, up to a maximum of sixty (60) PDH units.

Section 8. Reporting. (1) On the biennial renewal form, a licensee [licensees] shall certify whether or not the licensee has [that they have or have not] met the requirements of this administrative regulation.

(2) Biennial renewal forms received after September 1 shall be subject to the audit process in Section 9 of this administrative regulation.

Section 9. Audits. (1) Compliance with the CPD requirements shall be determined through a random selection process where a computer program shall select five (5) percent of the licensees filing biennial renewal forms on or before September 1 of that year [or as the result of information provided to the board].

(2) A licensee who is the subject [Licensees who are subjects] of an investigation pursuant to KRS 322.190 shall [may] be subjected to the audit requirements of this section.

(3) A licensee [Licensees] selected for audit shall provide the board with documentation as described in Section 5 of this administrative regulation within thirty (30) days of the board's request.

(4) If the board disallows credit due to the activity not meeting the requirements of Section 3(2) of this administrative regulation, or if the PDH units reported are less than thirty (30), the licensee shall have 180 calendar days after notification to substantiate the original claim or earn other PDH units to meet the requirement.

(5) Failure to comply with the CPD requirements shall be considered a violation of KRS 322.180(3) subjecting the licensee to disciplinary action.

(6) An audit [Audits] resulting in a determination of noncompliance shall subject the licensee to an automatic audit the next reporting period and each subsequent reporting period until an audit results in a determination of compliance.

Section 10. Delegation. The board may delegate its authority in this administrative regulation to a board committee or the executive director, ~~ad hoc committee, or staff~~.

B. DAVID COX, Executive Director

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**GENERAL GOVERNMENT CABINET  
Kentucky Board of Nursing  
(As Amended at ARRS, December 10, 2007)**

**201 KAR 20:470. Dialysis technician credentialing requirements and training program standards.**

RELATES TO: KRS 314.035, 314.137

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation establishes the requirements for dialysis technician training programs and for credentialing dialysis technicians.

Section 1. Definitions (1) "Approved dialysis technician training program" means a program to train dialysis technicians that is approved by the board.

(2) "Central venous catheter" means a catheter that is inserted in such a manner that the distal tip is located in the superior vena cava.

(3) "Dialysis technician applicant" means an individual who has applied for a dialysis technician credential.

(4) "Dialysis technician trainee" means an individual who is enrolled in an approved dialysis technician training program.

(5) "Supervision" means initial and ongoing direction, procedural guidance, observation, and evaluation by a registered nurse or physician, and when a patient is being dialyzed the registered nurse or physician is in the immediate clinical area.

Section 2. Requirements for Dialysis Technician Credential.

(1)(a) An individual who applies to be credentialed as a dialysis technician in order to engage in dialysis care shall:

1. File with the board the "Application for Dialysis Technician Credential";

2. Have completed an approved dialysis technician training program or an out-of-state dialysis training program to subsection (1)(b) of this section;

3. Pay the fee established in Section 12 of this administrative regulation;

4. Provide to the board a certified copy of the court record of any misdemeanor or felony conviction from any jurisdiction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years; and

5. Provide to the board a letter of explanation that addresses each conviction.

(b)1. If the dialysis technician applicant [individual] has completed an out-of-state dialysis technician training program, the applicant shall submit the training program curriculum and evi-

dence of completion to the board. The board or its designee shall evaluate the applicant's training program to determine its comparability with the standards as stated in Section 7 of this administrative regulation.

2. The board or its designee shall advise an applicant if the training program is not comparable and specify what additional components shall be completed to meet the requirements of Section 7 of this administrative regulation.

3. A dialysis technician applicant [An individual] who has completed an out-of-state dialysis technician training program shall be required to complete that portion of a board-approved dialysis technician training program related to specific portions of the legal and ethical aspects of practice as set forth in the "Dialysis Technician Training Program Guide". An applicant shall submit evidence to the board of successful completion of the following sections [as follows and shall submit evidence to the board of completion]:

a. State [Discuss state] and federal regulations governing dialysis;

b. The [Discuss the] principles and legal aspects of documentation, communication and patient rights;

c. The [Discuss the] roles of the dialysis technician and other multidisciplinary team members; and

d. Principles [Discuss principles] related to patient safety.

4. A dialysis technician applicant [An individual] who has completed an out-of-state dialysis technician training program shall submit the "Checklist for Dialysis Technician Competency Validation" signed by the individual's immediate supervisor.

5. An individual who has completed an out-of-state dialysis technician training program shall submit evidence of:

a. Successful completion of a comprehensive, written final examination from a board-approved dialysis technician training program; or

b. Dialysis [Current dialysis] technician certification issued within the past two (2) years by the National Nephrology Certification Corporation, the Board of Nephrology Examiners Nursing and Technology, or the National Nephrology Certification Organization.

(2) An individual shall be exempt from the credentialing requirement while enrolled in an approved dialysis technician training program. The individual shall use the title dialysis technician trainee.

(3) Upon approval of the application, the board shall initially issue the dialysis technician credential for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

(4) (a) An applicant for a dialysis technician credential may engage in dialysis care as a dialysis technician applicant upon:

1. Receipt by the board of the "Application for Dialysis Technician Credential"; and

2. Meeting the requirements of subsection (6) of this section.

(b) The dialysis technician applicant shall only practice dialysis care as an applicant until:

1. The credential is issued; or

2. The application is denied by the board.

(5) An "Application for Dialysis Technician Credential" submitted for initial credentialing shall be valid for six (6) months from the date of receipt by the board.

(6) A felony or misdemeanor conviction shall be reviewed to determine whether:

(a) The application shall be processed with no further action; or

(b) The application shall be processed only after:

1. The applicant has entered into an agreed order with the board with terms and conditions as agreed by the parties; or

2. If the parties are unable to agree on terms and conditions, a hearing is held pursuant to KRS 314.091 and 201 KAR 20:162, and a final decision is entered by the board.

Section 3. Renewal. (1) To be eligible for renewal of the credential, the dialysis technician shall submit, no later than one (1) month prior to the expiration date of the credential:

(a) The "Application for Renewal of the Dialysis Technician Credential"; and

(b) The fee established in Section 12 of this administrative regulation.

(2) Upon approval of the application, the credential shall be renewed for twenty-four (24) months. The credential shall lapse on the last day of the credentialing period.

**Section 4. Reinstatement.** (1) Before beginning practice as a dialysis technician or a dialysis technician applicant, the individual shall meet the requirements of this section. If the dialysis technician credential has lapsed for a period of less than one (1) credentialing period, the individual may reinstate the credential by:

(2)(a) Submitting the "Application for Dialysis Technician Credential"; and

(b) Paying the fee established in Section 12 of this administrative regulation.

(3)(2) If the dialysis technician credential has lapsed for more than one (1) credentialing period, the dialysis technician may reinstate the credential by:

(a) Completing a board-approved dialysis technician training program before submitting the "application for Dialysis Technician Credential". While enrolled in a training program, the individual shall be referred to as a dialysis technician trainee;

(b) Submitting the "Application for Dialysis Technician Credential";

(c) Paying the fee established in Section 12 of this administrative regulation; and

(d) Submitting the "Checklist for Dialysis Technician Competency Validation" signed by the individual's immediate supervisor.

(4)(3) An "Application for Dialysis Technician Credential" submitted for reinstatement shall be valid for six (6) months from the date of receipt by the board

~~[(4) While enrolled in a training program, the individual shall be referred to as a dialysis technician trainee. Before beginning practice as a dialysis technician or a dialysis technician applicant, the individual shall meet the requirements of this section.]~~

(5) Upon approval of the application, the credential shall be reinstated for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialing period.

**Section 5. Scope of Practice.** (1) The scope of practice of a dialysis technician shall include the following and shall be performed under the direct, on-site supervision of a registered nurse or a physician:

(a) Preparation and cannulation of peripheral access sites (arterial-venous fistulas and arterial-venous grafts);

(b) Initiating, delivering or discontinuing dialysis care;

(c) Administration of the following medications only:

1. Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant or advanced registered nurse practitioner. The dialysis technician shall not administer heparin in concentrations greater than 1:1000 units.

2. Normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician

3. Intradermal lidocaine, in an amount prescribed by a physician, physician's assistant, or advanced registered nurse practitioner;

(d) Assistance to the registered nurse in data collection;

(e) Obtaining a blood specimen via a dialysis line or a peripheral access site;

(f) Responding to complications that arise in conjunction with dialysis care, and

(g) Performance of other acts as delegated by the registered nurse pursuant to 201 KAR 20:400.

(2) The scope of practice of a dialysis technician shall not include:

(a) Dialysis care for a patient whose condition is determined by the registered nurse to be critical, fluctuating, unstable, or unpredictable;

(b) The connection and disconnection of patients from, and the site care and catheter port preparation of, percutaneously or surgi-

cally inserted central venous catheters; and

(c) The administration of blood and blood products.

**Section 6. Discipline of a Dialysis Technician.** (1) A dialysis technician, an employer of dialysis technicians, or any person having knowledge of facts shall report to the board a dialysis technician who may have violated any provision of this administrative regulation.

(2) The board shall have the authority to discipline a dialysis technician for:

(a) Failure to safely and competently perform the duties of a dialysis technician as stated in Section 5 of this administrative regulation;

(b) Practicing beyond the scope of practice as stated in Section 5 of this administrative regulation;

(c) Conviction of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence. A "conviction" shall include pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime;

(d) Obtaining or attempting to obtain a credential by fraud or deceit;

(e) Abusing controlled substances, prescription medications, or alcohol;

(f) Misuse or misappropriation of any drug placed in the custody of the dialysis technician for administration, or for use of others;

(g) Falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records;

(h) Having a dialysis technician credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this commonwealth;

(i) Practicing without filing an "Application for Dialysis Technician Credential" or without holding a dialysis technician credential,

(j) Abuse of a patient;

(k) Theft of facility or patient property;

(l) Having disciplinary action on a professional or business license,

(m) Violating any lawful order or directive previously entered by the board;

(n) Violating any administrative regulation promulgated by the board; or

(o) Having been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property.

(3) The discipline may include the following:

(a) Immediate temporary suspension of the credential, following the procedure set out in KRS 314.089;

(b) Reprimand of the credential,

(c) Probation of the credential for a specified period of time, with or without limitations and conditions;

(d) Suspension of the credential for a specified period of time;

(e) Permanent revocation of the credential, or

(f) Denying the application for a credential.

(4) The board shall follow the procedures set out in and have the authority set forth in KRS 314.091, 201 KAR 20:161 and 201 KAR 20:162 for management and resolution of complaints filed against a dialysis technician.

(5) In addition to the provisions of subsection (3) of this section, the board may impose a civil penalty of up to \$10,000.

**Section 7. Dialysis Technician Training Program Standards.** (1) Program administrator. A registered nurse, holding a current Kentucky license, temporary work permit, or multistate privilege, with at least one (1) year of experience in dialysis care, shall be administratively responsible for planning, development, implementation, and evaluation of the dialysis technician training program. The name, title, and credentials identifying the educational and professional qualifications of the program administrator shall be provided to the board. A change in the program administrator shall be re-

ported to the board within thirty (30) days of the change.

(2) Faculty qualifications. The dialysis technician training program shall be taught by multidisciplinary faculty with expertise in the subject matter. The name, title, and credentials identifying the educational and professional qualifications of each didactic and clinical instructor shall be provided to the board.

(3) The dialysis technician training program shall be based upon the "Dialysis Technician Training Program Guide".

(4) The dialysis technician training program syllabus shall include:

- (a) Prerequisites for admission to the program;
- (b) Program outcomes. The outcomes shall provide statements of measurable competencies to be demonstrated by the learner;
- (c) Objectives. Objectives shall be stated in behavioral terms with supportive content identified;
- (d) Content. The content shall be described in outline format with corresponding time frame and testing schedules;
- (e) Teaching methods. The activities of both instructor and learner shall be specified. These activities shall be congruent with stated objectives and content, and reflect application of adult learning principles;

(f) Instructional or reference materials. All required instructional reference materials shall be identified; and

(g) Evaluation. There shall be clearly defined criteria for evaluating the learner's achievement of program outcomes. There shall also be a process for annual program evaluation by trainees, program administrator, faculty, and employers.

(5) Any proposed substantive changes to the dialysis technician training program syllabus after initial submission shall be submitted to the board in writing and shall not be implemented without approval from the board.

(6) Trainee clinical practice requirements. The dialysis technician trainee enrolled in a dialysis technician training program shall practice dialysis care incidental to the training program only under the supervision of a faculty member, or his designee.

(7) The dialysis technician training program shall be at least 400 hours in length. A minimum of 200 hours shall be didactic.

(8) Completion requirements. Requirements for successful completion of the dialysis technician training program shall be clearly specified. The requirements shall include demonstration of clinical competency and successful completion of a comprehensive, written final examination. The final examination shall be administered only during the final forty (40) hours of the training program. There shall be a statement of policy regarding a trainee who fails to successfully complete the training program.

(9) The program shall establish a written records retention plan describing the location and length of time records are maintained. At a minimum, the following records shall be maintained by the program:

- (a) Provider name, dates of program offerings, and sites of the training program;
- (b) The program code number issued by the board; and
- (c) Trainee roster, with a minimum of name, date of birth, Social Security number, and program completion date.

(10) An individual who successfully completes the training program shall receive a certificate of completion that documents the following:

- (a) Name of individual;
- (b) Title of training program, date of completion, and location;
- (c) Provider's name;
- (d) The program code number issued by the board; and
- (e) Name and signature of program administrator.

(11) The program shall submit the "List of Dialysis Technician Training Program Graduates" within three (3) working days of the program completion date.

(12) The program shall notify the board in writing within thirty (30) days of a training program closure. The notification shall include the date of closing, a copy of the program trainee roster from the date of the last renewal to the date of closing, the location of the program's records as defined in subsection (9) of this section, and the name and address of the custodian of the records.

(13) A dialysis technician training program that conducts either the didactic portion or the clinical portion in this state shall be required to be approved by the board and the program shall meet the

requirements of this section.

Section 8. Dialysis Technician Training Program Initial Approval. (1) To receive initial approval, a dialysis technician training program shall:

(a) File an "Application for Dialysis Technician Training Program Approval"; and

(b) Pay the fee established in Section 12 of this administrative regulation.

(2) Board approval for a dialysis technician training program that meets the requirements of this administrative regulation shall be granted for a two (2) year period from the date of approval.

(3) Upon approval, the board shall issue a program code number.

Section 9. Continued Board Approval of a Dialysis Technician Training Program. (1) To receive continued approval, a dialysis technician training program shall:

(a) File an "Application for Dialysis Technician Training Program Approval";

(b) Submit an annual program evaluation summary report and any actions taken as a result of the evaluation as required by Section 7(4)(g) and (5) of this administrative regulation;

(c) Submit a list of current faculty including the name, title, and credential identifying the educational and professional qualifications of each instructor;

(d) Submit a copy of the program trainee roster for the past two (2) years as required by Section 7(9)(c) of this administrative regulation; and

(e) Pay the fee established in Section 12 of this administrative regulation.

(2) The application shall be submitted at least two (2) months prior to the end of the current approval period.

(3) Continued approval shall be based on compliance with the standards set out in Section 7 of this administrative regulation.

(4) Continued approval shall be granted for a two (2) year period.

(5) If a program fails to maintain continued approval, the approval shall lapse.

Section 10. Reinstatement of Dialysis Technician Training Programs. A program whose approval has lapsed and that seeks to reinstate that approval shall:

(1) File an "Application for Dialysis Technician Training Program Approval"; and

(2) Pay the fee established in Section 12 of this administrative regulation.

Section 11. Board Actions on Dialysis Technician Training Programs. (1) A representative of the board may make a site visit to a dialysis technician training program to determine if the program is complying with regulatory standards.

(2) The board shall prepare a report of the site visit, identifying deficiencies for the training program, and shall include recommendations and requirements to be met in order to maintain compliance with standards.

(3) The program administrator shall submit to the board a response to the site visit report.

(4) Based on the report of deficiencies, the training program's response, and any other relevant evidence, the board may grant approval, continue approval, continue approval with stipulations as determined by the board, or propose to deny or withdraw approval of the program.

(5) A dialysis technician training program administrator may request a review of a board decision concerning approval using the following procedure:

(a) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the dialysis technician training program administrator contests.

(b) The board, or its designee, shall conduct a review. The dialysis technician training program administrator may appear in person to present reasons why the board's decision should be set aside or modified.



(c) The dialysis technician training program administrator shall be notified of the board's decision.

(6) The board shall deny or withdraw approval of a program after an administrative hearing conducted pursuant to KRS Chapter 13B.

Section 12. Fees. (1) The application fee for the initial credential shall be seventy (70) dollars.

(2) The credential renewal fee shall be seventy (70) dollars.

(3) The credential reinstatement fee shall be seventy (70) dollars.

(4) The dialysis technician training program initial approval fee shall be \$950.

(5) The dialysis technician training program continued approval fee shall be \$800.

(6) The dialysis technician training program reinstatement fee shall be \$950.

(7) An additional fee of twenty-five (25) dollars shall be charged for an application for renewal of the credential that is filed after the deadline for filing.

(8) An additional fee of \$150 shall be charged for an application for continued dialysis technician training program approval that is filed after the deadline for filing.

(9) A fee of thirty-five (35) dollars shall be charged for issuing a duplicate of the credential.

(10) A check submitted to the board for payment of a fee which is returned by the bank for nonpayment shall be assessed a return check fee of thirty-five (35) dollars.

(11) A fee of ~~ten (10)~~ thirty-five (35) dollars shall be charged for written verification of a dialysis technician credential. If submitted in list format, a fee of ten (10) dollars for the first name shall be assessed and a fee of one (1) dollar shall be assessed for each additional name.

(12) A fee of twenty-five (25) dollars shall be charged for a duplicate application form which is issued due to the failure to maintain a current mailing address as required by Section 13 of this administrative regulation.

(13) A fee of thirty five (35) dollars shall be charged for a name change and the issuance of a new credential.

(14) All fees shall be nonrefundable.

Section 13. Miscellaneous Requirements. (1) Any person credentialed by the board as a dialysis technician shall maintain a current mailing address with the board and immediately notify the board in writing of a change of mailing address.

(2) As a condition of holding a credential from the board, a dialysis technician shall be deemed to have consented to service of notices or orders of the board at the mailing address on file with the board. Any notice or order of the board mailed or delivered to the mailing address on file with the board shall constitute valid service of the notice or order.

(3) Any dialysis technician credentialed by the board shall, within thirty (30) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony conviction in this or any other jurisdiction. A conviction shall include pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime. Upon learning of any failure to notify the board under this provision, the board may initiate an action for immediate temporary suspension until the person submits the required notification.

(4) Any dialysis technician credentialed by the board shall immediately notify the board in writing if any professional or business license that is issued to the person by any agency of the commonwealth or any other jurisdiction is surrendered or terminated under threat of disciplinary action or is refused, limited, suspended, or revoked, or if renewal of continuance is denied.

(5) If the board has reasonable cause to believe that any dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it may require the person to submit to a chemical dependency evaluation or a mental or physical examination by a practitioner it designates. Upon failure of the person to submit to a chemical dependency evaluation or a mental or physical examination, unless due to circumstances beyond the person's control, the board may initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an appli-

cation until the person submits to the required examination.

(6) Every dialysis technician shall be deemed to have given consent to submit to a chemical dependency evaluation of a mental or physical examination when so directed in writing by the board. The direction to submit to an evaluation or an examination shall contain the basis of the board's reasonable cause to believe that the person is unable to practice with reasonable skill and safety, or has abused alcohol or drugs. The person shall be deemed to have waived all objections to the admissibility of the examining practitioner's testimony or examination reports on the ground of privileged communication.

(7) The dialysis technician shall bear the cost of any chemical dependency evaluation or mental or physical examination ordered by the board.

Section 14. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) "Application for Dialysis Technician Training Program Approval", Kentucky Board of Nursing, 6/06;

(b) "Application for Dialysis Technician Credential", Kentucky Board of Nursing, 9/07 [7/04];

(c) "Application for Renewal of Dialysis Technician Credential", Kentucky Board of Nursing, 9/07 [7/04];

(d) "Checklist for Dialysis Technician Competency Validation", Kentucky Board of Nursing, 9/07 [7/04];

(e) "Dialysis Technician Training Program Guide" (August 14, 2001), Kentucky Board of Nursing; and

(f) "List of Dialysis Technician Training Program Graduates", Kentucky Board of Nursing, 9/07 [7/04].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4 30 p.m.

JIMMY ISENBERG, President

APPROVED BY AGENCY: August 29, 2007

FILED WITH LRC: October 4, 2007 at 9 a.m.

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#### GENERAL GOVERNMENT

#### Board of Physical Therapy

(As Amended at ARRS, December 10, 2007)

201 KAR 22:045. Continued competency requirements and procedures.

RELATES TO: KRS 327.010(1), (2), 327.070

STATUTORY AUTHORITY: KRS 327.040(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes continued competency requirements and procedures.

Section 1. Definitions. (1) "Contact hour" means the number of hours spent participating in an activity.

(2) "Continued competency" means a planned learning experience relating to the scope of physical therapy practice in KRS 327.010(1), whether the subject is intervention, examination, research, documentation, education, or management of health care delivery systems.

(3) "Practice in the field of physical therapy" means direct patient care, management of patient care, research, or teaching in a physical therapy educational program.

Section 2. (1) A credential holder applying for renewal shall have completed the continued competency requirements established in subsections (2) and (3) of this section during the preceding renewal period. Continued competency shall be based on contact hours awarded



(a) For a physical therapist, the board shall require thirty (30) contact hours as a condition of licensure renewal. These hours shall be obtained as follows:

1. Two (2) hours shall be awarded for the successful completion of an open book tutorial provided by the board on current physical therapy laws and administrative regulations per biennium;
2. At least eighteen (18) hours shall be earned from Category 1 described in subsection (2) of this section; and
3. No more than ten (10) hours may be earned from Category 2 described in subsection (3) of this section.

(b) For a Physical Therapist Assistant, the board shall require twenty (20) contact hours as a condition of renewal. These hours shall be obtained as follows:

1. Two (2) hours shall be awarded for the successful completion of an open book tutorial provided by the board on current physical therapy laws and administrative regulations per biennium;
2. At least ten (10) hours shall be earned from Category 1 described in subsection (2) of this section; and
3. No more than eight (8) hours may be earned from Category 2 described in subsection (3) of this section.

(2) Category 1 continued competency shall be any of the following:

(a) Completion of courses, seminars, workshops, symposia or home study courses consisting of at least three (3) contact hours that have been approved by board, the board's designee, APTA or its components, or any other physical therapy licensing agency [KSBPT or its designee];

(b) Completion or auditing of an accredited postsecondary educational institution credit course.

1. Twelve (12) contact hours shall be awarded for each semester credit hour completed; and

2. Eight (8) contact hours shall be awarded for each quarter credit hour completed;

(c) Presentation of continuing education courses, workshops, seminars, or symposia that have been approved by KSBPT or its designee;

(d) Authorship of a presented scientific poster, scientific platform presentation or published article undergoing peer review, but not more than ten (10) contact hours per event with a maximum of two (2) events per biennium;

(e) Teaching part of a physical therapy or physical therapist assistant credit course if that teaching is not the primary employment of the credential holder, but not more than twenty (20) contact hours per biennium;

(f) Certification or recertification of clinical specialization within the scope of physical therapy practice. Twenty-eight (28) contact hours shall be awarded per biennium;

(g) Completion of a clinical residency program, but not more than five (5) contact hours for each week of residency with a maximum of twenty-eight (28) contact hours per program per biennium;

(h) Engaging in the practice of physical therapy as defined by KRS 327.010(2) at least 1000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(i) Appointment to the Kentucky Board of Physical Therapy. Four (4) contact hours shall be awarded per biennium;

(j) Election or appointment to a position of the KPTA, APTA or Federation of State Boards of Physical Therapy (FSBPT) as an officer or committee chair. Four (4) contact hours shall be awarded per biennium; or

(k) Member of a committee or task force for one (1) of the organizations in Section 2(2) paragraph (i) or (j) of this administrative regulation. One (1) contact hour shall be awarded per biennium.

(3) Category 2 continued competency shall be any of the following:

(a) Self-instruction from reading professional literature. One (1) contact hour shall be awarded per biennium;

(b) Attendance at a scientific poster session, lecture, panel or symposium. One (1) contact hour for each hour of activity. A maximum of two (2) contact hours shall be awarded per biennium;

(c) Clinical instructor for a CAPTE approved educational program. Continued competency shall be one (1) contact hour per sixteen (16) hours of student supervision;

(d) Participation in a physical therapy inservice or study group

consisting of two (2) or more physical therapists or physical therapist assistants. A maximum of two (2) contact hours shall be awarded per biennium;

(e) Participation in community service related to health care. A maximum of two (2) contact hours Continued competency shall be awarded for two (2) hours per biennium; or

(f) Member of the APTA. One (1) contact hour shall be awarded per year and a maximum of two (2) contact hours per biennium;

(4) Documentation of compliance.

(a) Each licensee shall retain independently verifiable documentation of completion of all continued competency requirements of this administrative regulation for a period of three (3) years from the end of the biennium;

(b) The licensee shall, within thirty (30) days of a written request from the board, provide evidence of continued competency activities satisfactory to the board; and

(c) Any licensee who fails to provide evidence of the continued competency activities or who falsely certifies completion of continued competency activities may be subject to disciplinary action pursuant to KRS 327.070.

(5) Exemption and extension.

(a) A licensee may be granted a temporary hardship exemption for an extension of time, not to exceed one (1) renewal cycle, if the licensee:

1. Files a completed Extension of Time for Completion of Continuing Competency Form; and

2. Submits documentation showing evidence of undue hardship by reason of the licensee's:

a. Age

b. Disability

c. Medical condition;

d. Financial condition; or

e. Other clearly mitigating circumstance.

(b) A licensee may be granted a temporary nonhardship extension of time if the licensee cannot show undue hardship and if the licensee:

1. Files a completed Extension of Time for Completion of Continuing Competency Form by March 31 of the odd-numbered year in the renewal cycle for which the extension is sought;

2. Pays a fee of \$250;

3. Has not received a temporary nonhardship extension of time in the prior renewal cycle; and

4. Files proof of compliance with the continuing competency requirements by the following July 1.

Section 3. Incorporation by Reference. (1) "Extension of Time for Completion of Continuing Competency Form", 12/07, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable law, at the Kentucky Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Ky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. [(a) A licensee may be granted a temporary hardship exemption or an extension of time based upon application and a showing satisfaction to the board of undue hardship by reason of the licensee's age, disability, medical condition, financial condition, or other clearly mitigating circumstances, and which shall not exceed one (1) renewal cycle—Temporary Hardship Exemption or Extension Form 1,

(b) A licensee may be granted a temporary non-hardship extension of time if the licensee cannot show undue hardship and if the licensee:

(1) Files an application and pays a fee of \$250 for a temporary nonhardship extension of time by March 31 of the odd-numbered year in the renewal cycle for which the extension is sought;

(2) Has not received a temporary nonhardship extension of time in the prior renewal cycle; and

(3) Files proof of compliance with the continuing competency requirements by the following July 1—Temporary Nonhardship Extension Form 1.]

REBECCA KLUSCH, Executive Director

CONTACT PERSON Becky Klusch, Executive Director, Board

of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159, phone (502) 429-7140, fax (502) 429-7142.

**GENERAL GOVERNMENT CABINET**  
**Kentucky State Board for Proprietary Education**  
**(As Amended in ARRS, December 10, 2007)**

**201 KAR 40:020. Standards for approval of Associate Degree Programs [Award].**

RELATES TO: KRS 165A.310(5)(4), 165A.330(2), 165A.370(1)(e)

STATUTORY AUTHORITY: KRS 165A.330(1), 165A.340(3), (7), 165A.360(1), (2), (7), 165A.370(1), 165A.400(2), 165A.340(3), (7), 165A.360(1), (2), (7), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.370(1) requires that a school shall not [requires that no school shall] be issued a certificate of approval until the Board has[shall have] determined the school is in compliance with minimum standards leading to the awarding of an associate degree which indicates the satisfactory completion of a program [course] of study. This administrative regulation establishes the requirements for a school to award an associate degree.

Section 1. General Standards. (1) A school requesting consideration for approval to award an associate degree shall:

(a) [Any institution desiring to offer an associate degree must] Have been in operation and licensed in Kentucky or in another jurisdiction whose standards substantially meet or exceed those contained in this administrative regulation, for a continuous period of at least two (2) years immediately preceding the application;

(b) [and] Be Accredited by an [a nationally recognized] accrediting agency recognized [as such] by the United States Department of Education; [appropriate federal agency]

(c) Meet the standards set forth in KRS 165A.370 and this administrative regulation, [(2) Institutions seeking to award associate degrees shall offer the degree in accordance with all administrative regulations and requirements of the board.]

(d) File a completed, signed, and dated [Application to Award an Associate Degree] (Form PE-10) with the board; and [(3) An institution shall clearly define its philosophy and objectives within the requested associate degree program and incorporate these definitions into a written statement]

(e) Pay the fee for application to award an associate degree set forth in 201 KAR 40:025, Section 8; [(4) An institution shall clearly determine the potential job market availability for graduates of the associate degree program]

(f) Ensure that marketing techniques and advertisements shall not guarantee employment [and] [(5) The school may not offer to the public, advertise or enroll students in a new associate degree program until all necessary forms have been submitted to the board office for review and written authorization to initiate these activities received from the board office. At that time, an on-site visit of the proposed new degree program will be scheduled prior to the degree application being submitted to the full board for action. No classes in the program may commence before final board approval]

(g) Not offer to the public, advertise, or enroll students in a new associate degree program until all necessary forms have been submitted to the board office for review, and written approval of the application is received from the board; and [(6) If approval of the new degree program is granted, a second full-site visit will occur normally within sixty (60) days of the start of the first class. Expenses for all visitations will be borne by the institution.]

(h) Be inspected by a member of the board or board designee with prior notification to the school of the date and time of the inspection to determine compliance with KRS 165A.370 and this administrative regulation.

(2) A class in the program shall not [No classes in the program shall] commence before the inspection report evidences that the program is in compliance.

**Section 2. Associate of Arts Degree or Associate of Science**

Degree. (1) The granting of an associate of arts degree or associate of science degree shall be [is] limited to a school accredited by an [accredited junior colleges accredited as such by a nationally recognized] accrediting agency recognized [as such] by the U.S. Department of Education.

(2) The associate of arts degree or associate of science degree shall [may] be awarded to [conferred upon] a student who has successfully completed a degree program comprised of a minimum of sixty (60) semester credit hours or ninety (90) quarter credit hours of study.

(a) Of the total credit hours, [credits] a minimum of thirty (30) semester credit [standard] hours [or forty-five (45) [the equivalent] quarter credit hours, shall be in the appropriate business, technical, or other major field of study as indicated in the program [course] title and description.

(b) 1. A minimum of fifteen (15) [standard] semester credit hours [or twenty-two and one-half (22 1/2) [the equivalent] quarter credit hours, shall be required in general education studies [subjects].

2. General education studies shall include courses other than the core major offering and shall offer balance to the total program.

(3) a. At least one-half (1/2) of those subjects which are part of the curriculum in an associate of arts degree or an associate of science degree program [programme] shall be taught by faculty members possessing:

1. Related graduate, professional, or baccalaureate degrees; or

2. Professional certification.

(b) [related graduate degrees, including, but not limited to, M.A., M.S., or M.B.A., or professional degrees, including, but not limited to,] [professional certification such as] [J.D., or M.D., or baccalaureate degrees plus professional certification including, but not limited to,] [such as] [CPA, P.E., or R.N.] An exception to the requirement of an advanced degree may be justified for instructors of subjects in areas which are not normally academically credentialed or which are not normally credentialed with graduate degrees.

Section 3. Specialized Associate Degree. (1) The granting of a specialized associate degree designated as an [the] associate of applied science degree or associate of occupational studies degree is limited to schools accredited by an accrediting agency recognized [as such] by the U.S. Department of Education, [a nationally recognized accrediting agency or association recognized by the appropriate federal agency] as a business or specialized school.

(2) (a) The associate of applied science degree or associate of occupational studies degree shall [may] be awarded to [conferred upon] a student who has successfully completed a degree [an approved course of study in a] program comprised of a minimum of sixty (60) semester credit hours or ninety (90) quarter credit hours [of credit].

(b) These degrees shall [These degrees do] [This degree does] not require the inclusion of general education studies courses, but general education studies courses may be a part of the program.

(3) Faculty qualifications shall require that a minimum of a baccalaureate degree is held by faculty [or] that faculty possess the following alternate competency:

(a) Professional [recognition in the specialized subject area indicated by] licensure or certification in the specialized area or in a related specialized area; or

(b) Postsecondary education or training, plus at least two (2) years of documented practical experience in the specialized area or in a related specialized area [specialty].

Section 4. Additional Standards. (1) Additional standards applicable to an [all] associate degree [award] granting school[schools] [institutions] approved by this board include:

(a) The library [holdings] or learning resource center items [material] shall include relevant periodical subscriptions or computer data bases and shall contain professionally accepted references in the field or fields of study which shall be [are] appropriate for the program offered.

(b) The library or learning resource center shall [must] be accessible for all students to use the items [materials] and shall [must] provide access to [check-out opportunity of] materials at hours other than times when classes are being taught.

(c) 1. A designated [There shall be a] staff member shall be [designated as] responsible for the library or learning resource center, and sufficient funds [an adequate annual budget] for support of the facility and acquisition [acquisitions] of library or learning resource center items shall [materials must] be provided.

2. In determining whether sufficient funds are provided, current student enrollment shall be considered.

(d) All equipment and training aids shall be relevant to the program offered [and approved] and shall be in sufficient quality and quantity to accommodate the current [maximum] student enrollment. [The maximum enrollment shall be determined by available instructional space and qualified instructional personnel.]

(e) The school shall provide a listing of the program requirements and prerequisites for the degrees offered. [The board shall provide a review of the program by a professional knowledgeable within the field being considered.]

(f) 1. A catalog shall be printed containing a description for each course that is required or which may [can] be taken to meet the requirements for the degree.

2. The catalog shall include [any and] all prerequisites. [The institution shall provide a listing of the course requirements for the degree and any and all prerequisites required.]

(g) All promotional literature and advertising shall appropriately identify the degree offered. [There shall be printed in an appropriate document a course description for each course that is required or which can be taken to meet the requirements for the degree and all other promotional literature used shall appropriately identify the correct title of the degree offered and advertised.]

(h) 1. A completed [Form for Instructional Staff and Key Administrative Personnel] (Form PE-11) for each instructor shall be submitted to the board before classes listed on the application begin.

2. Official transcripts, and if applicable, copies of certifications, licenses, and other designations for each instructor [of faculty teaching] in the degree program shall be maintained on file at the school [institution and shall accompany any application for approval, where applicable].

(i) The school [institution] shall maintain [have] on file a [an appropriate and] current course syllabus for each course [subject] taught.

(j) The school [institution offering degrees] shall maintain on file for [provide] the board or its designee [evaluators with] a copy of its [their] last accreditation self-study and [all] correspondence with accrediting agencies.

(2) The school shall [applicant institution must] make the following materials available to a member of the board or its designee [the team of evaluators] at [the time of] the on-site visit:

- (a) Promotional literature [School catalog];
- (b) School catalog [Promotional literature used in program];
- (c) Course syllabi [Inventory of classroom equipment];
- (d) Inventory of classroom equipment [Faculty files];
- (e) Student files [Course syllabi];
- (f) Faculty files [Copy of standard student file];
- (g) Staff files [Copy of standard personnel files];
- (h) A list of all personnel by position indicating part-time and full-time employees [Total enrollment by program as of last start date]; and

(i) A current organizational chart [and

(j) A list of all personnel indicating part-time and full-time employees.]

#### Section 5. Revision of an Existing Associate Degree Program.

(1)(a) Written notification detailing cumulative curriculum changes in contact hours, credit hours, curriculum content (courses offered) or program length of a currently approved program, totaling less than twenty-five (25) percent within a twelve (12) month period shall be submitted to the board on a [Notification to Revise an Existing Program for Less Than 25%] (Form PE-12).

(b) A change in the name of an existing program that does not change the overall objective of the program shall not be considered

in the computation of the cumulative curriculum changes.

(2)(a) A school licensee shall submit an [Application to Revise an Existing Program for 25% or More] (Form PE-13) for approval by the Board if cumulative curriculum changes in contact hours, credit hours, curriculum content (courses offered), or program length of a currently approved program total twenty-five (25) percent or more within a twelve (12) month period.

(b) A change in the name of an existing program that changes the overall objective of the program shall be considered in the computation of the cumulative curriculum changes.

(3) A school shall notify the Board in writing of program name changes, course name changes, or course description changes.

#### Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application to Award an Associate Degree", Form PE-10, 2007 edition;

(b) "Form for Instructional Staff and Key Administrative Personnel", Form PE-11, 2007 edition;

(c) "Notification to Revise an Existing Program for Less Than 25%", Form PE-12, 2007 edition; and

(d) "Application to Revise an Existing Program for 25% or More", Form PE-13, 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Board for Proprietary Education, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky State Board for Proprietary Education executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the board as reflected in the board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 165A.

DR. STEPHEN COPPOCK, Chair  
ROBERT M. BURNSIDE, Secretary

CONTACT PERSON: Claude Wagner, Director, Kentucky State Board for Proprietary Education, 911 Leewood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

#### GENERAL GOVERNMENT CABINET Kentucky State Board for Proprietary Education (As amended at ARRS, December 10, 2007)

#### 201 KAR 40:025. Fees.

RELATES TO: KRS [65A.340(3); 165A.350(3), 165A.360(1), (2), (9); 165A.400, 165A.450]

STATUTORY AUTHORITY: KRS 165A.340(3), 165A.400  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(3) authorizes the board to promulgate administrative regulations to administer the provisions of KRS Chapter 165A [165.310 to 165.390], including establishment of fees and other charges. This administrative regulation establishes the fees for applications for initial licensure and renewal of licensure for resident and non resident schools, issuance of initial permits and renewals for agents of proprietary schools, award of associate degree, change of the name of a proprietary school, change of location of a proprietary school, addition of a new certificate or diploma program, revision of an existing program, transfer of ownership, transcript requests from a closed proprietary school, and contributions to the student protection fund.

Section 1. Definitions. (1) "Net tuition income" means the total amount of tuition earned by the resident school less any tuition refunds to the students during the immediate past calendar year, January 1 through December 31.

(2) "Transfer of ownership" means any change or transfer in ownership whether or not the change results in a change in control.

(3) "Enrollment" for purposes of this administrative regulation means the procurement directly or indirectly of a student's signature.

ture on an application or enrollment agreement in accordance with KRS 165A.310(4).]

Section 2. Initial Licensure Fee and Student Protection Fund Contribution for Schools. (1) The fee for initial licensure as a school residing in and doing business in Kentucky shall be \$300[,] and shall accompany Form PE-15, ["]Application for Resident School.["]

(2) The one-time contribution to the student protection fund for a school residing in and doing business in Kentucky shall be \$300, to be paid and shall accompany Form PE-15, Application for Resident School [at the time of initial application].

(3) The fee for initial licensure as a school not residing in Kentucky, but doing business in Kentucky, shall be \$900, and shall accompany Form PE-16, ["]Application for Non-Resident School.["]

(4) The one time contribution to the student protection fund for a school not residing in Kentucky, but doing business in Kentucky, shall be \$900, to be paid and shall accompany Form PE-16, Application for Non-Resident School [at the time of initial application].

(5) The initial licensure fee and student protection fund contribution shall not be prorated or refundable.

Section 3. Annual Renewal License Fee for Schools. (1) The annual renewal license fee for a school residing in and doing business in Kentucky shall be \$300 for schools whose net tuition income does not exceed \$50,000, plus fifteen (15) dollars for each additional \$10,000 of net tuition income in excess of \$50,000, not to exceed \$2,000. The annual renewal license fee shall accompany Form PE-17, ["]Application for License Renewal Resident School ["]

(2)(a) The annual renewal license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be \$900.

(b) The annual renewal fee shall accompany Form PE-18, ["]Application for License Renewal Non-Resident School.["]

(3) The annual renewal license fees for both resident and non-resident schools shall not be prorated or refundable.

Section 4. Annual Permit Fees for Agents. (1) The annual permit fee for each agent working for a school licensed by the board shall be \$150 and shall accompany either Form PE-19, ["]Application for Permit to Act as an Agent,["] or Form PE-20, ["]Application for Renewal of Permit to Act as an Agent,["] whichever is applicable

(2) The annual permit fee and the annual permit renewal fee for agents shall not be prorated or refundable.

Section 5. Transfer of Ownership of a School. (1) The fee for recording a transfer of ownership of a school licensed by the board in accordance with 201 KAR 40:160 shall be \$500, and shall accompany Form PE-21, ["]Application to Transfer Ownership of a School ["]

(2) The fee for recording a transfer of ownership shall not be prorated or refundable.

Section 6. Change of Name of a School. (1) The fee for approval of a change of name of a school shall be \$100, and shall accompany Form PE-22, ["]Application to Change the Name of a School.["]

(2) The fee for approval of a change of name of a school [school's name change] shall not be prorated or refundable.

Section 7. Change of location of a school. (1) The fee for approval of a change of location of a school shall be \$500, and shall accompany Form PE-23, ["]Application to Change the Location of a School ["]

(2) The fee for approval of a change of [school] location of a school shall not be prorated or refundable.

Section 8. Application to Award an Associate Degree. (1)(a) The fee for an application to award an associate degree in accordance with 201 KAR 40:020 shall be \$500 per degree, and shall accompany Form PE-10, ["]Application to Award an Associate Degree,["] referenced by 201 KAR 40:020.

(b) ~~If [in the event]~~ a school simultaneously submits multiple applications for approval of associate degrees, the fee shall not exceed \$1,000 per school.

(2) The fee for application to award an associate degree shall not be prorated or refundable.

Section 9. New Program. (1) The fee for approval of a new certificate or diploma program shall be \$150, and shall accompany Form PE-14, ["]Application for a New Program.["]

(2) The fee for approval of a new certificate or diploma program shall not be prorated or refundable.

Section 10. Program Revisions:["] Certificate, Diploma, and Degree. (1) The fee for approval to revise twenty-five percent (25) or more of any existing program, as established in 201 KAR 40:020, Section 5(2) shall be \$150, and shall accompany Form PE-13, ["]Application to Revise an Existing Program for 25% or More,["] as referenced in 201 KAR 40:020.

(2) The fee for approval to revise an existing program shall not be prorated or refundable.

Section 11. Maximum fee. A school with multiple locations simultaneously filing applications for Board approval for more than one transfer of ownership, change of name, change of location, addition of a new program, revision of an existing program or associate degree, shall not pay more than \$1,000.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for a New Program", Form PE-14, 2007 edition;

(b) "Application for Resident School" Form PE-15 2007 edition;

(c) "Application for Non-Resident School", Form PE-16, 2007 edition;

(d) "Application for License Renewal Resident School", Form PE-17, 2007 edition;

(e) "Application for License Renewal Non-Resident School", Form PE-18, 2007 edition;

(f) "Application for Permit to Act as an Agent", Form PE-19, 2007 edition;

(g) "Application for Renewal of Permit to Act as an Agent", Form PE-20, 2007 edition;

(h) "Application to Transfer Ownership of a School", Form PE-2, 2007 edition;

(i) "Application to Change the Name of a School", Form PE-22, 2007 edition; and

(j) "Application to Change the Location of a School", Form PE-23, 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky State Board for Proprietary Education executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 165A.

STEPHEN COPPOCK, Chair

ROBERT BURNSIDE, Secretary

CONTACT PERSON: Claude Wagner, Director, Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET  
Kentucky State Board for Proprietary Education  
(As Amended at ARRS, December 10, 2007)

201 KAR 40:027. School record keeping requirements.

RELATES TO: KRS 165A.370(1)  
STATUTORY AUTHORITY: KRS 165A.340(7),  
165A.370(1)(h), (i), 165A.400  
NECESSITY, FUNCTION, AND CONFORMITY: KRS  
165A.370(1)(h) and (i) set forth the types of records which  
shall be maintained by a proprietary school. KRS 165A.340(7) and  
165A.400 authorize the Board to promulgate necessary  
administrative regulations to promote efficiency of operations relat-  
ing to proprietary schools. This administrative regulation specifies  
the manner in which documents shall be maintained and submitted  
to the board.

Section 1. Minimum Record Keeping Requirements. Each  
licensed proprietary school shall maintain a separate file for each  
student, including, at a minimum. At a minimum, the school shall  
maintain the following documents for each student]:

- (1) Student application for admission;
- (2) Enrollment agreement;
- (3) Transcript or other academic record;
- (4) Student account;
- (5) Placement record; and
- (6) Attendance record.

Section 2. Annual Renewal Record Keeping Requirements.  
(1)(a) Effective with the 2008 annual license renewal, all proprie-  
tary schools shall submit electronic copies of all students' tran-  
scripts and student accounts of each student who has attended the  
school since the end of the immediately preceding renewal period

(b) The electronic copies shall be identified on the Appli-  
cation for License Renewal Resident School (PE-17) or the  
Application for License Renewal Nonresident School (PE-18),  
incorporated in 201 KAR 40:025, Section 3, and shall be sub-  
mitted in conjunction The documentation shall be submitted  
simultaneously] with the annual renewal application and shall be  
organized alphabetically according to the students' last names.

(c) (Forms PE-17 and PE-18 are referenced in 201 KAR  
40:025, Section 3.) Acceptable electronic formats shall be are]  
Microsoft Office 97 or later versions, tif, pdf, jpg, jpeg, or other  
generally accepted electronic formats [other electronic format  
acceptable to the board]

(2) If there is a change of ownership or a school closure, elec-  
tronic [files containing] copies of all students' transcripts and stu-  
dent accounts shall be submitted to the Board within thirty (30)  
days of the transfer or closure.

This is to certify that the Chair of the Kentucky State Board of  
Proprietary Education executes this administrative regulation prior to  
filing, pursuant to the authority granted by statute, and following a  
vote of approval by the board as reflected in the board's minutes.  
This administrative regulation is filed with the Legislative Research  
Commission as required by KRS Chapter 13A to carry out and  
enforce the provisions of KRS Chapter 165A.

STEPHEN COPPOCK, Chair  
ROBERT BURNSIDE, Secretary  
CONTACT PERSON: Claude Wagner, Director, Kentucky State  
Board for Proprietary Education, 911 Leawood Drive, Frankfort, Ken-  
tucky 40601, phone (502) 564-3296, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET  
Kentucky State Board for Proprietary Education  
(As Amended at ARRS, December 10, 2007)

201 KAR 40:030. Procedures for hearings.

RELATES TO: KRS Chapter 13B, 165A.350(4)(b),  
165A.360(3)(b), 165A.370(2)-(4), 165A.390, 165A.990

[165A.350(3)(b), 165A.360(3)(b), 165A.370(2)-(4)] [KRS Chapter  
165A]

STATUTORY AUTHORITY: KRS Chapter 13A,  
165A.350(4)(b), 165A.360(3)(b), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 13A.100  
requires an administrative body which is empowered to promulgate  
administrative regulations to prescribe the procedures to be utilized  
in the conduct of hearings unless the procedures are prescribed by  
statute.] KRS 165A.340(3) and 165A.400 authorize the board to  
promulgate administrative regulations KRS 165A.350(4)(b),  
165A.360(3)(b), and 165A.370(4) provide for hearings, but do not  
prescribe procedures. This administrative regulation establishes  
hearing procedures.

Section 1. Definitions (1) "Chair" means the chair or vice-chair  
of the board.

(2) "Charge" means a specific allegation contained in a formal  
complaint, as established in Section 5(3) of this administrative  
regulation, issued by the board alleging a violation of a specified  
provision of KRS Chapter 165A or the requirements established  
in 201 KAR Chapter 40 [administrative regulations promulgated  
thereunder]

(3) "Complaint" means a written allegation of misconduct by an  
agent or school, or other allegation of a violation of KRS Chapter  
165A, the requirements established in 201 KAR Chapter 40  
[administrative regulations promulgated thereunder], or another  
state or federal statute or regulation applicable to an agent or  
school

(4) "Complaint committee" means the committee appointed  
pursuant to Section 2 of this administrative regulation.

(5) "Formal complaint" means a formal administrative pleading  
authorized by the board which sets forth charges against a li-  
censed school or agent and commences a formal disciplinary pro-  
ceeding pursuant to KRS Chapter 13B or requests a court to take  
action.

(6) "Informal proceeding" means a proceeding instituted during  
the disciplinary process with the intent of reaching a disposition of  
a matter without further recourse to formal disciplinary procedures  
under KRS Chapter 13B.

(7) "Investigator" means an individual designated by the board  
to assist the board in the investigation of a complaint or an investi-  
gator employed by the Attorney General for the board. [Purpose  
and Rule of Construction. The purpose of this administrative regu-  
lation is to enable the state Board for Proprietary Education to  
conduct an orderly and reasonably expeditious search for the truth  
while ensuring that due process is afforded to the licensee, appli-  
cant and students. Accordingly, this administrative regulation shall  
be liberally construed so as to aid that process.]

Section 2. Complaint Committee. The complaint committee  
shall:

- (1) Be appointed by the chair of the board to:
  - (a) Review complaints and investigative reports;
  - (b) Participate in an informal proceeding to resolve formal  
complaints; and
  - (c) Make recommendations for disposition of complaints to the  
full board; and

(2) Consist of three (3) persons who may be assisted by the  
board staff and counsel to the board. [Composition of the Hearing  
Panel. (1) Disciplinary actions shall be heard by a hearing panel  
consisting of three (3) members of the board and a hearing officer  
appointed by the board.

(2) A board member who has participated in the investigation  
of a disciplinary action, or who has discussed the merits of an ac-  
tion with the agency staff, or who has personal knowledge of the  
facts giving rise to a disciplinary action shall not sit on a panel  
hearing that particular action.

(3) Staff members of the board, legal counsel for the board and  
a court stenographer shall be present for the hearing.]

Section 3. Receipt of Complaints (1) A complaint may be  
submitted by an individual, organization, or entity.

(a) A complaint shall be in writing and shall be signed and  
certified as to its truth by the person offering the complaint.

(b) The board may file a complaint based on information in its possession.

(c) A complaint shall [A complaint may] be filed with the board on Form PE-24, [Form to File a Complaint,] accompanied, if applicable, by Form PE-25, [Authorization for Release of Student Records].

(2)(a) Upon receipt of a complaint, a copy of the complaint shall be sent to the agent or school named in the complaint along with a request for a written response to the complaint.

(b) The agent or school shall file a written response with the board within ten (10) days from the date of receipt.

(3)(a) Upon receipt of the written response of the agent or school named in the complaint, a copy of the response shall be sent to the complainant.

(b) The complainant shall have ten (10) days from the date of receipt to submit to the board a written reply.

(4) Upon receipt of the complainant's reply, the complaint committee may request an additional response from the agent or school if [regarding] additional issues are raised, [Rights of the Licensee or Applicant. The licensee or applicant shall have the right to be heard by the hearing panel, to be represented by legal counsel, to present evidence, to cross-examine witnesses presented by the board, and to make both opening and closing statements.]

Section 4. Initial Review (1)(a) After the receipt of a complaint[,] or the expiration of the period for the response, the complaint committee shall consider the complaint, response, and complainant's reply to the response, and other relevant material available, and make a recommendation to the board.

(b) The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines that[, in the opinion of the board,] a complaint does not warrant a [the] formal investigation [of a complaint] against an agent or school, or the issuance of a formal complaint against an agent or school, then the board shall dismiss the complaint and shall notify both the complainant and the agent or school of the board's decision.

(3) If the board determines that[, in the opinion of the board,] a complaint warrants a formal investigation against either an agent or school, then the board shall authorize an investigator to investigate the matter and make a report to the complaint committee at the earliest opportunity. [Prehearing Disclosure of Evidence - (1) By the board. The licensee or applicant shall have the right to inspect the investigative file relating to a disciplinary action either in person or by legal counsel. The names, addresses and phone numbers of witnesses expected to be called by the board and copies of documentary evidence intended to be introduced at the hearing shall be furnished to the licensee or applicant, or his attorney if represented by counsel, at least ten (10) days prior to the scheduled hearing date. Nothing in this section shall be construed as giving the licensee or applicant the right to examine or copy the personal notes, observations, or conclusions of the board's investigators, nor shall it be construed as allowing access to the work product of legal counsel for the board. The licensee or applicant shall also be permitted to examine any items of tangible evidence in the possession of the board.]

(2) By the licensee or applicant. At least ten (10) days prior to the scheduled hearing date, the licensee or applicant shall furnish to the investigator or legal counsel for the board copies of any documents which the licensee or applicant intends to introduce at the hearing, and a list of the names, addresses and home and work telephone numbers of any witnesses to be presented to the hearing panel by the licensee or applicant. The licensee or applicant shall produce for inspection any items of tangible evidence within his possession or control which he intends to introduce at the hearing.

(3) At least the (10) days prior to the scheduled hearing date, the licensee or applicant shall file with the board a sworn written response to the specific allegations contained in the notice of charges. Allegations not answered or denied shall be deemed admitted. The panel may for good cause permit the late filing of an answer.

(4) Sanctions for failure to comply with prehearing disclosure. If

a party fails to comply with this section, the panel hearing the disciplinary action may refuse to allow into evidence the items or testimony that have not been disclosed, may continue the action to allow the opposing party a fair opportunity to meet the new evidence, or may make other orders as it deems appropriate. Sanctions shall be applied by the board members of the panel.

(5) Continuing duty to disclose. After disclosure has been completed, each party shall remain under an obligation to disclose any new or additional items of evidence or witnesses which may come to its attention. Additional disclosure shall take place as soon as practicable. Failure to disclose may result in the exclusion of the new evidence or testimony from the hearing.

(6) Authority to issue subpoenas. The board or the hearing officer appointed by it shall have the authority to issue subpoenas for the attendance of witnesses and the production of papers and records.]

Section 5. Results of Formal Investigation: Board Decision on Hearing. (1) Upon completion of a formal investigation, the complaint committee shall consider the facts regarding the complaint.

(a) The committee shall review an investigative report[,] and supporting documents[,] and make a recommendation to the board.

(b) The board shall determine whether there is enough evidence to believe that a violation of the law or administrative regulations may have occurred and whether a formal complaint shall be filed.

(2)(a) If the board determines that[, in the opinion of the board,] a complaint does not warrant the issuance of a formal complaint and the holding of a hearing, then the complaint shall be dismissed or other appropriate action taken.

(b) The board shall notify both the complainant and the agent or school of the outcome of the complaint.

(3)(a) If the board determines that[, in the opinion of the board,] a complaint warrants the issuance of a formal complaint against an agent or school, then a formal complaint which states clearly the charge or charges to be considered at the hearing shall be prepared.

(b) The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the agent or school as required by KRS 13B.050 [13B.040].

(4) If the board determines that[, in the opinion of the board,] an individual or school may be operating without the appropriate permit or license, then the Board shall[may]:

(a) Authorize the board administrator to send a letter to the individual or school advising them that they may need a permit or license, and enclose the appropriate application package;

(b) Authorize board counsel to issue a letter ordering that individual or school to cease and desist from operating the school;

(c) Forward information to the county attorney of the county of residence of the individual or school allegedly acting without appropriate permit or license, or the county where the alleged violation occurred, with a request that appropriate action be taken under KRS 165A.990; or

(d) Initiate action in Franklin Circuit Court for injunctive relief, [Order of Proceeding - (1) The hearing officer shall call the meeting to order, identify the parties to the action and the persons present and read the letter of notice and charges. The hearing officer shall ask the parties to state for the record any objections or motions. The board members of the panel shall rule upon any objections or motions. Opening statements shall then be made, with the attorney for the board proceeding first. Either side may waive its opening statement, but opening statements may not be reserved.]

(2) The taking of proof shall commence with the calling of witnesses on behalf of the board. Witnesses shall be examined first by the attorney for the board, then by the licensee or applicant, or his attorney if represented by counsel, and finally by members of the hearing panel. Rebuttal examination of witnesses shall proceed in the same order. Documents or other items may be introduced into evidence as appropriate.

(3) Upon conclusion of the case for the board, the licensee or applicant shall call his witnesses. The witnesses shall be examined first by the licensee or applicant, or his attorney if represented by counsel, then by the attorney for the board, and finally by the



members of the hearing panel. Rebuttal examination of those witnesses shall proceed in the same order. Documents or other evidence may be introduced as appropriate.

(4) At the conclusion of the proof, the parties shall be afforded the opportunity to make a closing statement, with the attorney for the board always proceeding last. The hearing officer may impose reasonable limitations upon the time allowed for opening and closing statements.

(5) The hearing officer shall enforce general rules of conduct and expedite the hearing by keeping the testimony and exhibits relevant to the case.]

**Section 6. Settlement by Informal Proceedings and Letter of Admonishment.** (1) The board, through counsel and the complaint committee, may enter into informal proceedings with the agent or school which is the subject of the complaint for the purpose of resolving the matter.

(a) An agreed order or settlement reached through this process shall be approved by the board and signed by the board chairman and the agent or school which is the subject of the complaint, and the chairman.

(b) The board may employ mediation, persuasion, or conciliation, as methods of resolving the matter informally.

(2)(a) The board may issue a written admonishment to the agent or school if the board determines that [in the judgment of the board]

1. An alleged violation is not of a serious nature; and

2. The evidence presented to the board after the investigation and appropriate opportunity for the agent or school to respond, provides a clear indication that the alleged violation did in fact occur.

(b) A copy of the admonishment shall be placed in the permanent file of the agent or school.

(c) Within thirty (30) days of receipt of an admonishment, the agent or school shall file:

1. A response to the admonishment which shall be placed in the agent's or school's permanent licensure file; or

2. A request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment, file a formal complaint, and set the matter for hearing pursuant to the provisions of KRS Chapter 13B. [Rules of Evidence—(1) The hearing panel shall not be bound by the technical rules of evidence. The hearing panel may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law. Documentary evidence may be admitted in the form of copies or excerpts, and shall be authenticated only to the extent that the panel is satisfied as to its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the board is satisfied that the item is what is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.

(2) The panel retains the discretion to exclude any evidence which it considers to be unreliable, incompetent, irrelevant, immaterial or unduly repetitious. Rulings on objections to evidence shall be made by the board members of the panel.]

**Section 7. Incorporation by Reference** (1) The following material is incorporated by reference:

(a) "Form to File a Complaint", Form PE-24, (2007 edition), and

(b) "Authorization for Release of Student Records", Form PE-25, (2007 edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board for Proprietary Education, 911 Leawood Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 30 p.m. [Recommendation by the Hearing Panel, (1) Upon the conclusion of the hearing, the panel shall retire into closed session for the purpose of deliberations. Each board member of the panel shall have one (1) vote.

(2) At the conclusion of the panel's deliberations, it shall propose an order based upon the evidence presented. The hearing officer shall draft a proposed decision including findings of fact and conclusions of law consistent with the panel's deliberations and a

recommended order to be submitted to the full board. A copy of the proposed decision shall be sent to the licensee or applicant, or his attorney if represented by counsel, by certified mail, to all members of the board and to the attorney for the board.

**Section 8. Written Arguments or Exceptions to a Proposed Decision.** The licensee or applicant shall have twenty (20) days from the date the proposed decision is mailed to file with the board written arguments or exceptions to any portion of the proposed decision. The twenty (20) day period may be extended at the discretion of the board president in unusual circumstances. The attorney for the board shall have ten (10) days from the expiration of the period allowed to the licensee or applicant to file responses on behalf of the board.

**Section 9. Decision by the Board.** (1) At the next scheduled regular meeting or as soon thereafter as may be arranged, the board shall review the proposed decision and consider the evidence presented, and, after consideration of any written arguments or exceptions which have been presented, shall make a final determination, as follows:

Adopt the proposed decision as submitted; or

(b) Modify the proposed decision as deemed necessary; or

(c) Remand the cause to the hearing panel for further evidence.

(2) If the cause is remanded, the hearing panel shall schedule another hearing to obtain additional evidence; and

(b) The board shall consider the findings of fact and recommendations from the original hearing, any additional hearing and any additional written arguments or exceptions the parties have presented, and shall render its final decision in the case.

**Section 10. Record to be Maintained.** A transcript of the testimony taken during the hearing(s) shall be kept by the board. A copy of that transcript shall be available to the licensee or applicant from the court stenographer or, if the stenographer is unable to furnish a copy, from the board upon request and payment of the appropriate fee. A copy of the transcript of the hearing(s) shall be available to all board members. Any documents or exhibits introduced into evidence shall be kept with the transcript.

**Section 11. Continuances.** It is the policy of the board not to postpone cases which have been scheduled for hearings absent good cause. A request by a licensee or applicant for a continuance may be considered if communicated to the staff reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the board members of the panel. However, the burden is upon the licensee or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

**Section 12. Copy to be Provided to Licensee or Applicant.** A copy of this administrative regulation shall be provided to the licensee or applicant prior to the hearing.]

This is to certify that the Chair of the Kentucky State Board for Proprietary Education executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the board as reflected in the board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 165A.

DR. STEPHEN COPPOCK, Chair

ROBERT M. BURNSIDE, Secretary

CONTACT PERSON: Claude Wagner, Director, Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET  
Kentucky State Board for Proprietary Education  
(As Amended at ARRS, December 10, 2007)



201 KAR 40:150. Bond requirements for agents and schools.

RELATES TO: KRS 165A.350(3)-(7), (10), 165A.360(2)-(5), (10)  
STATUTORY AUTHORITY: KRS 165A.340(3), 165A.350(3), 165A.360(2), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(3) and 165A.400 authorize the board to promulgate administrative regulations to administer the provisions of KRS 165A.310-165A.390~~165.310 to 165.390~~, including establishment of fees and other charges. KRS 165A.350 requires all proprietary schools to maintain a surety bond for the agents and the schools. KRS 165A.360(2)~~165A.350(3)-(7)~~ sets forth the range of bonding requirements for agents and schools and requires the board to establish the bond amounts. This administrative regulation sets the surety bond requirements to be maintained on agents and schools.

Section 1. Surety Bond. (1) A school shall.

- (a) Complete ~~["School Surety Bond"]~~ Form PE-26; and
- (b) Maintain a school surety bond in the amount of \$20,000.

(2) In lieu of the school surety bond, the Board shall accept an irrevocable letter of credit made in favor of the Kentucky State Board for Proprietary Education from a verifiable licensed financial institution in the amount of \$20,000.

Section 2. Agent Surety Bond. (1) A school shall:

- (a) In accordance with KRS 165A.350(3) maintain an agent surety bond, or in the case of multiple agents, maintain a blanket agent surety bond, in the amount of \$5,000 for each agent employed by the school; and
- (b) Complete Form PE-27, ~~["Blanket Agent Surety Bond."]~~

(2) In lieu of the agent surety bond, the board shall accept an irrevocable letter of credit from a licensed financial institution equal to the amount specified above, made in favor of the Kentucky State Board for Proprietary Education.

Section 3. Multiple School Campuses. (1) Each school campus for any school residing in and doing business in Kentucky for licensing and bonding purposes shall be considered a separate school and shall be required to provide a separate school surety bond and an agent surety bond.

(2) Each non residential school doing business in Kentucky shall be required to provide a school surety bond and an agent surety bond.

Section 4. Incorporation by Reference (1) The following material is incorporated by reference:

- (a) "School Surety Bond", Form PE-26, 2007 edition; and
- (b) "Blanket Agent Surety Bond", Form PE-27, 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

This is to certify that the Chair of the Kentucky State Board of Proprietary Education executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the board as reflected in the board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 165A.

STEPHEN COPPOCK, Chair  
ROBERT BURNSIDE, Secretary

CONTACT PERSON Claude Wagner, Director, Kentucky State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818

GENERAL GOVERNMENT CABINET  
Kentucky State Board for Proprietary Education  
(As Amended at ARRS, December 10, 2007)

201 KAR 40:155. School closing process.

RELATES TO: KRS 61.870-61.884, 61.878(1)-(5), 165A.340(8), 165A.370, 165A.390(5)

STATUTORY AUTHORITY: KRS 165A.390(5), 165A.400  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.400 authorizes the Board to promulgate administrative regulations to administer the provisions of KRS 165A.310 to 165A.390. Pursuant to KRS 165A.390(5), prior to discontinuance of operations, a school shall convey student records to the board. The board shall set forth which records are to be conveyed, the manner they are to be conveyed, where they shall be stored~~will be stored~~ and the length of time for storage. This administrative regulation sets forth the specific responsibilities of a licensed school ~~if~~when it discontinues operations in accordance with KRS 165A.390(5).

Section 1. Definitions. (1) "Academic records" means records pertaining to academic matters, including~~[-but not limited to,]~~ enrollment agreements, contracts, transcripts, syllabi, catalogs, course listings, and attendance records whether maintained in paper or electronic form.

(2) "Discontinuance of operation" means ceasing to operate as a school in the ordinary course of business, or in accordance with the minimum standards and requirements set forth in KRS 165A.370, or in a manner that prevents a student from completing~~whereby students are unable to complete~~ the course or courses as scheduled.

(3) "Financial aid records" means records pertaining to financial aid matters including~~[-but not limited to,]~~ applications for financial aid, award notices, disbursement amounts, refunds, student accounts, and loan promissory notes.

(4) "Financial records" means records pertaining to financial matters including~~[-but not limited to,]~~ ledger cards to include charges, credits, disbursements, refunds, and ~~other~~ financial information.

Section 2. Procedures for Discontinuance of Operations and Conveyance of Student Records. (1) A school shall notify the board in writing of its intent to discontinue operations at least ten (10) business days prior to discontinuation of operations.

(2) A school shall simultaneously submit to the board and the surety or financial institution notification of cancellation of school surety bonds, agent surety bonds, or letters of credit.

(3) If a school closes, the school~~When a school notifies the board of its intention to close, it~~ shall make arrangements with the board to forward all student transcripts, financial aid records, and financial records to the offices of the board.

Section 3. Immediate or Precipitous~~Immediate/Precipitous~~ School Closure In the absence of a notification of the intent to close, if ~~[upon determination by]~~ the board determines that a school has discontinued operations, a school shall submit ~~[subpoena shall be issued in accordance with KRS 165A.340(8) for]~~ the following records:

(1) Academic records of current and former students who attended the school within the last two (2) years prior to closure;

(2) Transcripts of former students who attended the school more than two (2) years prior to closure;

(3) Financial aid records of current and former students; and

(4) Financial records of current and former students, and

(5) Documents subpoenaed by the board or the board's designee in accordance with KRS 165A.340(8)~~[Any other document subpoenaed by the board or its designee].~~

Section 4. Retention of Records by the Board. (1) The board shall retain the original documents, or true and accurate copies, of transcripts and all other documentation received pursuant to Section 2 of this administrative regulation ~~[above]~~, in accordance with the Board for Proprietary Education Records Retention Schedule Recommendation~~[board's records retention schedule]~~ developed with the Kentucky Department of Libraries and Archives.

(2) Documents obtained by the board pursuant to Section 2 of this administrative regulation shall be ~~[deemed]~~ state records un-

der KRS 61.870 to 61.884 and subject to KRS 61.878(1)-(5).

**Section 5. Incorporation by Reference. (1) "Board for Proprietary Education Records Retention Schedule Recommendation", October 18, 2007, is incorporated by reference.**

**(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board for Proprietary Education, 911 Leewood Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.**

This is to certify that the Chair of the Kentucky State Board of Proprietary Education executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the board as reflected in the board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 165A.

STEPHEN COPPOCK, Chair

ROBERT BURNSIDE, Secretary

CONTACT PERSON: Claude Wagner, Director, Kentucky State Board for Proprietary Education, 911 Leewood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

**GENERAL GOVERNMENT CABINET  
Kentucky State Board for Proprietary Education  
(As Amended at ARRS, December 10, 2007)**

**201 KAR 40:160. Transfer of ownership, change of location, change of name, revision to existing programs.**

RELATES TO: KRS 165A.360(2), (7), (9), 165A.370(1), (2)

STATUTORY AUTHORITY: KRS 165A.340(7), 165A.360(2), (9), 165A.370(1)(b), (l), [(9),] 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.400 authorizes the Board to promulgate administrative regulations to administer the provisions of KRS 165A.310 to 165A.390. Pursuant to KRS 165A.360(9), certificates of approval issued by the Board are transferable. KRS 165A.370(1)(b) and (l) provide the board with the authority to ensure that schools have all the necessary equipment to operate. ~~[When a school's ownership is transferred the board requires the new owner to notify the board in order that an inspection can be made to ensure that the facility remains capable of providing the contracted for education. The board needs to be apprized of this information to stay current regarding its licenses.]~~ This administrative regulation governs the procedures that a school shall ~~must~~ follow to transfer ownership, change the location, change the name of the school, or revise an existing program for twenty-five (25) percent or more, as established in 201 KAR 40:020, Section 5(2).

Section 1. Transfer of Ownership. A school which transfers ownership shall: (1) File a completed, signed and dated "[Application to Transfer Ownership of a School,]" (Form PE-21), referenced by 201 KAR 40.025, for board approval within ten (10) days following the effective date of transfer. ~~[It is recommended that schools submit this form prior to transfer.]~~

(2) Pay by check or money order a transfer fee as set forth in 201 KAR 40:025, Section 5; and

(3) Submit a copy of legal evidence showing the transfer of ownership agreement and evidence of purchase.

Section 2. Change of Location. (1) A school ~~that~~ which changes location shall at least thirty (30) days prior to the change of location:

(a) File a completed, signed, and dated, "[Application to Change the Location of a School,]" (Form PE-23), referenced by 201 KAR 40.025, for board approval; and

(b) Pay by check or money order an application fee for the change of location set forth in 201 KAR 40.025, Section 7.

(2)(a) An inspection shall be conducted by a member of the board or its designee and submitted to the Board for approval.

(b) Schools that fail to meet minimum statutory and regulatory

standards ~~shall~~ will be provided a list of corrective measures to be completed prior to operation of the school.

Section 3. Change of Name of a School. ~~[(4)]~~ A school which changes its name shall at least (30) days prior to the change of name:

(1)(a) File a completed, signed, and dated, "[Application to Change the Name of a School,]" (Form PE-22), referenced by 201 KAR 40:025, for board approval; and

(2)(b) Pay by check or money order an application fee for a change of name as set forth in 201 KAR 40.025, Section 6.

Section 4. Revise An Existing Program. (1) A school which revises an existing program for twenty-five (25) percent or more, as established in 201 KAR 40:020, Section 5(2) shall at least thirty (30) days prior to the next board meeting:

(a) File a completed, signed, and dated, "[Application to Revise an Existing Program for 25% or More,]" (Form PE-13), referenced by 201 KAR 40:020, for board approval; and

(b) Pay by check or money order the fee as set forth in 201 KAR 40:025, Section 10.

(2) A school which revises an existing program for less than twenty-five (25) percent shall file a completed, signed, and dated, "[Notification to Revise an Existing Program For Less Than 25%,]" (Form PE-12), referenced by 201 KAR 40.020, prior to the effective date of change.

Section 5. Expansion of School Facilities. (1) If a school expands the space of an approved location, the school shall notify the Board in writing at least ten (10) days prior to occupancy.

(2) If a school utilizes a space, other than an approved location, on an on-going basis, which is already approved for public use, ~~[including, but not limited to, a hotel, library, or convention center,]~~ the school shall notify the board in writing.

This is to certify that the Chair of the Kentucky State Board of Proprietary Education executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the board as reflected in the board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 165A.

STEPHEN COPPOCK, Chair

ROBERT BURNSIDE, Secretary

CONTACT PERSON: Claude Wagner, Director, Kentucky State Board for Proprietary Education, 911 Leewood Drive, Frankfort, Kentucky 40601; phone (502) 564-3296, fax (502) 564-4818.

**CABINET FOR ECONOMIC DEVELOPMENT  
Kentucky Economic Development Finance Authority  
(As Amended at ARRS, December 10, 2007)**

**307 KAR 1:040. Application process for incentives for energy independence.**

RELATES TO: KRS ~~[Chapter 44A:]~~ 61.878, 154.27-010 - 154.27-090

STATUTORY AUTHORITY: KRS 154.27-030, 154.20-020, 154.20-033[(4)(e), 154.20-033, 154.20-020]

NECESSITY, FUNCTION AND CONFORMITY: KRS 154.27-030(10) ~~[154.27-010 through 154.27-090]~~ requires the Kentucky Economic Development Finance Authority to establish standards and requirements for the application process for incentives for energy independence, and KRS 154.27-030(2)(f) authorizes fees in conjunction with the application process. This administrative regulation clarifies the application process, identifies the information required for purposes of application, and clarifies the steps that shall be taken by the authority and the applicant between preliminary approval and final approval.

Section 1. Definitions. (1) "Affiliate" is defined by KRS 154.27-010(2).

(2) "Agreement" means a "tax incentive agreement" as defined by KRS 154.27-010(28).

(3) "Application" means the form "Application for Incentives for Energy Independence Act (IEIA) Tax Incentive Program."

(4) "Authority" is defined by KRS 154.27-010(6).

(5) "Capital investment" is defined by KRS 154.27-010(9).

(6) "Carbon capture ready" is defined by KRS 154.27-010(10).

(7) "Project" means an "eligible project" as defined by KRS 154.27-010(15).

(8) ~~[(7)]~~ "Retrofit" is defined by KRS 154.27-010(26).

(9) ~~[(8)]~~ "Upgrade" is defined by KRS 154.27-010(30).

Section 2. Application. (1) An applicant for incentives pursuant to KRS Subchapter 154.27 shall submit an application to the authority at the applicable address stated in the application instructions.

(a) If the applicant is retrofitting or upgrading an existing facility [business], the applicant shall [must] notify the appropriate regional office within the Department for Existing Business Development within the Cabinet for Economic Development. That office shall assign a project manager to assist the applicant in any matters concerning the Kentucky Cabinet for Economic Development.

(b) If the applicant is a new business locating in Kentucky, the applicant shall [must] notify the Department for New Business Development in the Cabinet for Economic Development. That office shall assign a project manager to assist the applicant in any matters concerning the Kentucky Cabinet for Economic Development.

(c) An [Ne] application shall not receive consideration without the signature of an agent of the cabinet from the appropriate office as identified in the application instructions.

(d) An application shall [Applications must] be received by the office identified in the application instructions as appropriate, prior to the last Friday of the month to be considered at the following month's meeting of the authority.

(2) In addition to the information required by KRS 154.27-030, the applicant shall provide as part of the application the following information:

(a) Identification of the applicant's affiliates as required by KRS 154.27-030 shall include:

1. Entity name;

2. State of incorporation or organization;

3. Federal tax identification number or Social Security numbers for individual partners;

4. Agent for service of process;

5. Street address;

6. Telephone number; and

7. If there are more than two (2) affiliates, a diagram of the ownership structure of the affiliated companies. [the entity name, state of incorporation or organization, federal tax identification number or social security number for individual partners, agent for service of process, street address and telephone number, and if there are more than two (2) affiliates, shall include a diagram of the ownership structure of the affiliated companies;]

(b) 1. Identification of each anticipated source of eligible project funding as required by KRS 154.27-030 shall include the:

a. Name of any agencies or institutions to which loan or grant applications have been submitted or are anticipated;

b. Date of the loan or grant application submission or the anticipated date of submission;

c. Amount and type of funds requested or to be requested; and

d. Current status of each loan or grant application, date of closing, and award or transfer of funds. [name of any agencies or institutions to which loan or grant applications have been submitted or are anticipated, the date of the loan or grant application submission or the anticipated date of submission, the amount and type of funds requested or to be requested, the current status of each loan or grant application, date of closing, award or transfer of funds.]

2. Copies of grant or loan applications, agreements or contracts related to funding shall be provided upon request of the authority;

(c) An itemized list of the capital investment, including specific estimated cost by line item, identification of items expected to qualify for sales tax exemption, and projected date of completion of the project;

(d) Identification of the proposed feedstock and, for each type of feedstock, either anticipated or confirmed sources;

(e) A business plan for the facility, including a full analysis of the product to be produced, market potential for the product identified and any long term contracts that are already in place for sale of the product, legal structure of the applicant and identification of the management team for the applicant and, if different, at the project site;

(f) A financial statement from the applicant for the most recent fiscal year end, and if the applicant is a newly formed entity, a financial statement from the entity [entities] or individuals forming the entity;

(g) A letter from the applicant containing:

1. If [stating that, if] the project is a new location, a statement that the economic development project may reasonably and efficiently locate outside of the Commonwealth and, without the inducements offered by the authority, the eligible company would likely locate outside the state; or

2. If [or, if] the project is a retrofit or upgrade, a statement that the tax incentives are necessary for the retrofit or upgrade to occur.

(h) A plan for employment of Kentucky residents during construction required by KRS 154.27-030, which shall include an explanation of methods to be employed and shall describe specific actions that shall be taken by the applicant to ensure that Kentucky residents shall have opportunities for employment;

(i) If requested by the authority, a letter of support from the local government describing local economic development funding or incentive and [as well as] giving general support for the proposed project, and

(j) An application fee in the amount of \$1,000.

Section 3. Use and Costs of Consultant. (1) If the authority determines pursuant to KRS 154.27-030(5)(c) that there is a need to consult with an outside expert, after preliminary approval, the authority shall contract with an outside consultant with the expertise required to analyze the project.

(2) The consultant shall review the work to be completed and provide an estimate of the cost;

(3) The applicant shall pay to the authority the total estimated cost upon execution of the consultant payment agreement.

(4) The authority shall pay the consultant from the consultant funds paid by the applicant in accordance with the terms and conditions of the consultant payment agreement.

(5) Any balance of funds remaining after completion and delivery of the consultant's analysis to the authority shall be returned to the applicant.

Section 4. Memorandum of Agreement. If the authority grants preliminary approval of the application, it shall enter into a Memorandum of Agreement with the applicant which shall include:

(1) The maximum incentive amount preliminarily approved by the authority;

(2) The amount and the percentage of incentives to be provided under each available recovery method, if applicable;

(3) Conditions for final approval, including:

(a) Verification of representations made in the application and other documents submitted in association with the application;

(b) Payment for all professional services that may result from the application including legal fees and expenses of counsel through [to] the authority pursuant to KRS 154.20-033;

(c) A date by which the applicant shall request the final approval from the authority;

(d) Verification of information necessary for calculation of advance payment incentive if requested by applicant; and

(e) Terms and standards for amendment of the Memorandum of Agreement.

Section 5. Information Sharing (1) The authority may seek comments and recommendations from the Governor's Office of Energy Policy and the Center for Applied Energy Research with

regard to the following:

(a) Whether the facility, as proposed, is eligible for incentives pursuant to KRS Subchapter 154.27;

(b) Whether the facility is carbon capture ready [as defined by KRS 154.27-010(10)], if applicable, including comments regarding appropriate equipment and floor plan required for compression and storage of carbon;

(c) Feasibility of the project, including the product, the market for the product, and the process employed;

(d) Applicable permits that shall be required and projection of eligibility of the facility; and

(e) Issues or questions relating to the application and applicant eligibility for incentives.

(2) Information provided to the authority in conjunction with the application may be shared with the Office of Energy Policy, the Department of Revenue, the Center for Applied Energy Research, and other appropriate experts or consultants, and those agencies, experts, or consultants shall maintain the confidentiality of the information provided to the extent that the information is exempt from disclosure under the Kentucky Open Records Act, KRS 61.878.

**Section 6. Payment of Administrative Fees.** (1) Upon final approval and execution of the agreement, the applicant shall remit to the authority an administrative fee equal to 25 percent of the incentives authorized in the tax incentive agreement, not to exceed \$50,000. This administrative fee shall be [e] exclusive of any expert consultant or legal fees which may be due.

(2) The applicant shall not be eligible for incentives until the administrative fee, any consultant payments or legal fees, and expenses are paid in full.

**Section 7. Incorporation by Reference.** (1) "Application for Incentives for Energy Independence Act (IEIA) Tax Incentive Program, November, 2007" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the following locations of the Cabinet for Economic Development, Monday through Friday, 8 00 a.m. to 4:30 p.m.:

(a) Central Kentucky Office, 2300 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601;

(b) East Kentucky Office, 530 South Lake Drive Prestonsburg, Kentucky 41653, [or]

(c) West Kentucky Office, 145 East Center Street, Suite 28, Madisonville, Kentucky 42431 if the applicant is an existing business considering a retrofit or upgrade; and

(d) Department for New Business Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601 if the applicant is a new business.

JEAN HALE, Chairman

JOHN E. HINDMAN, Secretary

APPROVED BY AGENCY: October 8, 2007

FILED WITH LRC: October 8, 2007 at 3 p.m.

CONTACT PERSON: Hollie Spade, Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1535.

#### JUSTICE AND PUBLIC SAFETY CABINET

Department of Kentucky State Police

(As Amended at ARRS, December 10, 2007)

502 KAR 13:010. Application for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired [Kentucky] elected or appointed peace officers.

RELATES TO: KRS 15.383, 61.365, 186.412, 237.138-237.142, 446.010(25), 18 U.S.C. 926C, Pub.L. 108-277 [237-140, 237.138, 237.140, 237.142, 18 U.S.C. 926C]

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired [Kentucky] elected

or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the requirements [requirement] and procedures for certification.

**Section 1. Definitions.** (1) "Applicant" means an honorably retired peace officer [officer] who has applied to the Kentucky State Police to be certified to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C.

(2) "Application form" means the "Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License."

(3) "Honorably retired" means an [a-Kentucky] elected or appointed peace officer who:

(a) Retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

(b) Before retirement, was authorized by law to engage in or supervise [as] the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

(c) 1. Before retirement, was regularly employed as a law enforcement officer for an aggregate of fifteen (15) years or more; or

2. Retired from service with an agency, after completing any applicable probationary period of service, due to a service-connected disability, as determined by the agency;

(d) Has a nonforfeitable right to benefits under the retirement plan of the agency;

(e) During the most recent twelve (12) month period, has met, at the expense of the retired peace officer [officer], Kentucky's standards for training and qualifications for active law enforcement officers to carry firearms, as set out in KRS 15.383;

(f) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(g) Is not prohibited by Federal law from receiving a firearm.

(4) [(3)] "Peace Officer" is defined by KRS 446.010(25) [446.010(24)] and 61.365.

**Section 2. An application form shall be identified by a unique number that shall be:**

(1) Expressed on the application form as a bar code that contains the application number;

(2) Used as the identifying number for the applicant; and

(3) Machine and human readable.

**Section 3. Application forms shall:**

(1) Not be stored in an area accessible to the public; and

(2) Not be removed from the office of the sheriff except as permitted by Section 6(4) of this administrative regulation.

**Section 4. A sheriff shall issue an application form to an applicant if:**

(1) An applicant meets the requirements established by KRS 237.138 to 237.142.

(2) The sheriff has verified that an applicant is qualified for certification pursuant to KRS 237.138 to 237.142 and this administrative regulation.

(3) An applicant has submitted the material required by KRS 237.138 to 237.142 and this administrative regulation.

(4) Verification that an applicant is a Kentucky resident is made by:

(a) Submission of a valid Kentucky operator's license or personal identification card issued by a circuit court clerk pursuant to KRS 186.412;

(b) Personal knowledge of the sheriff; or

(c) Confirmation by another governmental agency; and

(5) Verification of an applicant's Social Security number is made by submission of:

(a) The applicant's Social Security card; or

(b) A governmental agency document that contains the applicant's name and Social Security number.

**Section 5. Completion of Application Form. An applicant shall:**

- (1) Complete an application in the presence of the sheriff.
- (2) Sign the application in the applicant signature block of the application form in ink;
- (3) Provide the information required by KRS 237.110(7)(a) through (e) on the application form;
- (4) Not fold or tear the form;
- (5) Use a black ink pen to complete the form;
- (6) Not mark or otherwise make an entry in the "For Sheriff's Dept. Use Only" portion;
- (7) Fill each bubble completely;
- (8) Fill in or enter information, as appropriate, within a column block or bubble;
- (9) Write within the constrained areas.
- (10) Use upper case (capital) letters;
- (11) Provide a photograph of the applicant complying with the provisions of 502 KAR 13:070[13-060].
- (12) Submit the following completed forms to the sheriff to be attached to the application form:
  - (a) A Peace Officer Range Qualification Certification-LEOSA (KSP 123); and
  - (b) A Certification Of Law Enforcement Retirement-LEOSA (KSP 124); and
- (13) Not be required to pay an application fee.

Section 6. Sheriff's Duties. (1) If an applicant fails to follow the instructions for completion of an application, the sheriff shall:

- (a) Destroy the improperly completed application; and
  - (b) Require the applicant to complete a new application form.
- (2) The sheriff shall complete in black ink the upper right hand portion of the application form titled "For Sheriff's Dept. Use Only" by:

- (a) Completing the ORI Number;
- (b) Filling in the date of application;
- (c) Indicating the applicant is a retired peace officer;
- (d) Indicating the applicant is seeking LEOSA certification; and
- (e) Signing in the portion labeled "Authorizing Official Signature."

(3) The sheriff shall place the following material in a single applicant packet:

- (a) The applicant's completed application form;
  - (b) A photograph of the applicant complying with the provisions of 502 KAR 13:070[13-060]; and
  - (c) A completed KSP 123 and 124.
- (4) The sheriff shall mail single applicant packets:
- (a) In a bulk mailer; and
  - (b) On dates established by the "CCDW-LEOSA Application Mailing Schedule For Sheriffs."

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA Application for License," July 2005;
- (b) "CCDW-LEOSA Application Mailing Schedule For Sheriffs," July 2006;
- (c) "Peace Officer Range Qualification Certification-LEOSA," KSP 123, 07/05, and
- (d) "Certification Of Law Enforcement Retirement-LEOSA," KSP 124, 08/06.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700.

[Application—An applicant shall apply to the Kentucky State Police to be certified to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C by completing the "Commonwealth of Kentucky Carry Concealed Deadly Weapons—LEOSA Application for License" and submitting it to the Kentucky State Police through the Sheriff's Department of the county in which the applicant resides. A fee shall not be required for the application.

Section 3. Accompanying Documents—The following documents shall accompany an application:

- (1) Peace Officer Range Qualification Certification—LEOSA

(KSP Form Number 123);

(2) Certification of Law Enforcement Retirement—LEOSA (KSP Form Number 124); and

(3) A notarized statement that the applicant is not prohibited by state or federal law from possessing a firearm, as required by KRS 237.140(2)(e).

Section 4. Perform Live firing Exercises.—An applicant shall annually qualify for certification by performing a live firing exercise in which the applicant is required to:

- (1) From a safe position;
- (2) Perform without receiving any assistance in holding, aiming, or firing from the instructor or any other person; and
- (3) Meet the marksmanship qualification requirement for a retired peace officer as specified in KRS 237.140(4)(a).

Section 5. Supervision of Live firing Exercise.—The live firing exercise shall be supervised as required by KRS 237.140(4)(b).

Section 6 Live Firing Exercise Procedures and Grading—(1) If the live firing exercise is conducted at a facility or range that requires a training instructor or range officer to clear or directly supervise and assist in the clearing of all firearm jams or malfunctions, the clearing of a firearm jam or malfunction by a certified firearms instructor or facility range officer in accordance with that policy shall not constitute prohibited assistance to an applicant for the purposes of Section 4(2).

(2) An applicant shall provide a safe, functional handgun and factory-loaded ammunition.

(3) Prior to conducting range firing, the firearms instructor shall:

- (a) Inspect each applicant's firearm; and
- (b) Not allow the firing of a handgun that the instructor has reason to believe is not in sound mechanical condition or otherwise may pose a safety hazard.

(4) A passing grade shall not be given on range work to an applicant who:

- (a) Does not follow the orders of the firearms instructor;
- (b) In the judgment of the firearm instructor, handles a firearm in a manner that poses a danger to the applicant or to others; or
- (c) Fails to hit the silhouette portion of a target with a majority of the twenty (20) rounds without assistance in holding, aiming, or firing the firearm from the instructor or another person.

(5) If the applicant successfully completes the live firing exercise, within five (5) working days after the completion of the live firing exercise, the firearms instructor shall mail or deliver the completed "Peace Officer Range Qualification Certification—LEOSA" (KSP Form Number 123) showing the applicant's successful completion of the live firing exercise to the Kentucky State Police, Criminal Identification and Records Branch, CCDW Section, 1250 Louisville Road, Frankfort, Kentucky 40601.

Section 7 Issuance and Expiration of License—Upon receipt of the documentation required by Sections 3 and 6 of this administrative regulation, the Kentucky State Police shall issue a license confirming that the applicant is licensed to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C. A license shall expire on the date listed on the identification card described in Section 8 of this administrative regulation. Any license holder wishing to renew their license shall apply and be approved in the manner described in this administrative regulation for first time applicants.

Section 8. Identification.—If an applicant successfully meets the criteria established by this administrative regulation to carry a concealed deadly weapon, the Kentucky State Police shall provide photographic identification confirming that the applicant is licensed to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C.

(1) The front of the photographic identification card shall include the following information:

- (a) Name of license holder;
- (b) Address of license holder;
- (c) Date of Birth of license holder;
- (d) Law enforcement agency license holder retired from;
- (e) Expiration date of license; and
- (f) LEOSA license identification card number.

(2) The back of the photographic identification card shall include the following statement: The Commonwealth of Kentucky hereby certifies that the license holder identified on the front of this card is a qualified retired law enforcement officer as defined in the Law Enforcement Officers Safety Act of 2004 (PubL 108-277) and

has, within one (1) year prior to the expiration date shown on the front of this card, been tested or otherwise found by the Commonwealth of Kentucky to meet the standards established by the commonwealth for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ~~"Commonwealth of Kentucky Carry Concealed Deadly Weapons LEOSA Application for License", July 2005~~

(b) ~~"Peace Officer Range Qualification Certification-LEOSA (KSP Form Number 123", July 2005 and~~

(c) ~~"Certification of Law Enforcement Retirement LEOSA (KSP Form 124)", July 2005~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700.]

JOHN (JACK) ADAMS, COMMISSIONER

APPROVED BY AGENCY: October 11, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

CONTACT PERSON: Karen S. Howard, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

**JUSTICE AND PUBLIC SAFETY CABINET**  
Department of Kentucky State Police  
(As Amended at ARRS, December 10, 2007)

502 KAR 13:030. Range qualification for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the requirements and procedures for range qualification for certification.

Section 1. Perform Live-firing Exercises. An applicant shall annually qualify for certification by performing a live-firing exercise in which the applicant is required to:

- (1) Fire from a safe position;
- (2) Perform without receiving any assistance in holding, aiming, or firing from the instructor or any other person; and
- (3) Meet the marksmanship qualification requirement for a retired peace officer as specified in KRS 237.140(4)(a).

Section 2. Supervision of Live-firing Exercise. The live-firing exercise shall be supervised as required by KRS 237.140(4)(b).

Section 3. Live-Firing Exercise Procedures and Grading. (1) If the live-firing exercise is conducted at a facility or range that requires a training instructor or range officer to clear or directly supervise and assist in the clearing of all firearm jams or malfunctions, the clearing of a firearm jam or malfunction by a certified firearms instructor or facility range officer in accordance with that policy shall not constitute prohibited assistance to an applicant for the purposes of Section 1(2) of this administrative regulation.

(2) An applicant shall provide a safe, functional handgun and factory-loaded ammunition.

(3) Prior to conducting range firing, the firearms instructor shall:

- (a) Inspect each applicant's firearm; and
- (b) Not allow the firing of a handgun that the instructor has reason to believe is not in sound mechanical condition or otherwise may pose a safety hazard.

(4) A passing grade shall not be given on range work to an applicant who:

- (a) Does not follow the orders of the firearms instructor;
- (b) In the judgment of the firearms instructor, handles a firearm in a manner that poses a danger to the applicant or to others; or

(c) Fails to meet the marksmanship qualification requirement for a retired peace officer as specified in KRS 237.140(4)(a).

(5) If the applicant successfully completes the live-firing exercise, the firearms instructor shall mail or hand deliver the completed "Peace Officer Range Qualification Certification - LEOSA," KSP Form Number 123, showing the applicant's successful completion of the live-firing exercise to the applicant within five (5) business days.

Section 4. Incorporation by Reference. (1) "Peace Officer Range Qualification Certification-LEOSA," KSP 123, 07/05, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700.

JOHN ADAMS, Commissioner

APPROVED BY AGENCY: October 11, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

**JUSTICE AND PUBLIC SAFETY CABINET**  
Department of Kentucky State Police  
(As Amended at ARRS, December 10, 2007)

502 KAR 13:040. Issuance, expiration, and renewal of certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

RELATES TO: KRS 186.412, 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the requirements and procedures for the issuance, expiration, and renewal of a LEOSA license.

Section 1. Definition. (1) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.

Section 2. Issuance of License[Certification] (1) The department shall issue a LEOSA license if it confirms that the applicant is qualified to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C after the department has received the documentation required by 502 KAR 13 010.

(2) If the department issues a LEOSA license, it shall:

- (a) Transmit the license to the sheriff, and
- (b) Send an issuance notice to the applicant, informing him or



her that the license is being conveyed to the sheriff of the county where the applicant resides and what date the license will be available from the sheriff.

(3) The sheriff shall issue the license to the applicant upon:

(a) Verification of the identity of the applicant by:

1. Submission of a valid Kentucky operator's license or personal identification card issued by a circuit court clerk pursuant to KRS 186.412; or

2. Personal knowledge of the sheriff; and

(b) Signature of the issuance notice by the applicant in the presence of the sheriff or the sheriff's designee.

Section 3.[2-] Expiration. A LEOSA license shall expire one (1) year from the date of the range qualification listed on the "Peace Officer Range Qualification Certification-LEOSA," KSP 123, submitted with the application.

Section 4.[3-] Renewal. Not less than one hundred twenty (120) days prior to the expiration date of the license, the department shall mail to each licensee a "Notice of Expiration - LEOSA." Any licensee wishing to renew the license shall apply and be approved in the manner described in 502 KAR 13.010 and this administrative regulation for first time applicants except that a licensee may submit a copy of the Certification Of Law Enforcement Retirement-LEOSA (KSP 124) that was previously provided with the licensee's[his] original LEOSA application.

Section 5.[4-] Identification. A LEOSA license issued by the department to a successful applicant shall consist of a photographic identification card containing the following:

(1) The front of the photographic identification card shall include the following information for the certified retired peace officer:

- (a) Name;
- (b) Address;
- (c) Date of birth,
- (d) Law enforcement agency retired from;
- (e) Expiration date of certification;

(f) LEOSA license[~~certification-identification-card~~] number; and

(g) Photograph

(2) The back of the photographic identification card shall be substantially in the following form: The Commonwealth of Kentucky hereby certifies that the licensee identified on the front of this card is a qualified retired law enforcement officer as defined in the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C, and has, within one (1) year prior to the expiration date shown on the front of this card, been tested or otherwise found by the Commonwealth of Kentucky to meet the marksmanship qualification requirement established by the Commonwealth for peace officers.

Section 6.[5-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Peace Officer Range Qualification Certification-LEOSA", KSP 123, 07/05;

(b) "Notice of Issuance", 1/9/07; and

(c) "Notice of Expiration - LEOSA", 6/21/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification & Records Branch is (502) 227-8700.

JOHN ADAMS, Commissioner

APPROVED BY AGENCY: October 11, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686

JUSTICE AND PUBLIC SAFETY CABINET  
Department of Kentucky State Police  
(As Amended at ARRS, December 10, 2007)

502 KAR 13:050. Replacement of licenses to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

RELATES TO. KRS 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the requirements and procedures for the replacement of LEOSA licenses that have been lost, destroyed, or stolen.

Section 1. Definition. (1) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.

Section 2. Lost, Destroyed, or Stolen LEOSA License [~~Lost, destroyed, or stolen LEOSA license. (1) If a LEOSA license is lost, destroyed, or stolen, a licensee shall notify the department on a "Request For Duplicate LEOSA License," KSP 127.~~]

(2) A licensee shall complete the "Request For Duplicate LEOSA License," KSP 127, in the presence of the sheriff.

(3) The completed "Request For Duplicate LEOSA License," KSP 127, shall be:

- (a) Signed by the licensee in the presence of the sheriff; and
- (b) Notarized.

(4) The completed "Request For Duplicate LEOSA License," KSP 127 shall be:

- (a) Signed by the sheriff, and
- (b) Transmitted by the sheriff to the department in the manner set forth in 502 KAR 11.010, Section 10

(5) If the department approves the request for a duplicate license, the department shall.

(a) Issue a duplicate license that contains a license number that differs from the license number on the lost, destroyed, or stolen license;

(b) Send the duplicate license to the sheriff.

(c) Notify the licensee in writing that the duplicate license may be obtained by the licensee:

- 1. At the office of the sheriff; and
- 2. After verification of identity of the licensee as provided by 502 KAR 13.010, Section 4

(6) If the department denies the request for a duplicate license, it shall notify the licensee in writing.

Section 3.[2-] Incorporation by Reference. (1) "Request For Duplicate LEOSA License," KSP 127, 06/12/06, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700.

JOHN ADAMS, Commissioner

APPROVED BY AGENCY: October 11, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.



JUSTICE AND PUBLIC SAFETY CABINET  
Department of Kentucky State Police  
(As Amended at ARRS, December 10, 2007)

502 KAR 13:060. Change of personal information regarding certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers [~~who are honorably retired~~].

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the requirements and procedures for the change of personal information regarding LEOSA licensees.

Section 1. Definition. (1) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.

Section 2. Change of Personal Information. (1) If the address or personal information of a licensee has changed, the licensee shall notify the department within thirty (30) days of the change of personal information on the "Law Enforcement Officers Safety Act License Request for Change of Personal Information," KSP 120.

(2) The "Law Enforcement Officers Safety Act License Request for Change of Personal Information," KSP 120, shall be:

(a) Completed and signed by the licensee in the presence of the sheriff; and

(b) Executed under oath.

(3) The sheriff shall verify the change of personal information as provided by 502 KAR 13:010, Section 4.

(4) The completed "Law Enforcement Officers Safety Act License Request for Change of Personal Information," KSP 120, shall be:

(a) Signed by the sheriff; and

(b) Transmitted by the sheriff to the department pursuant to 502 KAR 11:010, Section 10.

Section 3.[2.] Incorporation by Reference. (1) "Law Enforcement Officers Safety Act License Request for Change of Personal Information," KSP 120, 08/06, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700.

JOHN ADAMS, Commissioner

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JUSTICE AND PUBLIC SAFETY CABINET  
Department of Kentucky State Police  
(As Amended at ARRS, December 10, 2007)

502 KAR 13:070. Applicant photograph requirements for certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18

U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes applicant photograph requirements for LEOSA certification.

Section 1. Definition. (1) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.

Section 2. The photograph of an applicant for a LEOSA ~~li-~~ ~~cence~~[certification] shall:

(1) Be a color photograph;

(2) Be no less than three and one-half (3 1/2) inches by four (4) inches;

(3) Not exceed four (4) inches by five (5) inches;

(4) Display the full front of the head and the facial features of the applicant;

(5) Not be a photograph of the applicant wearing sunglasses or attire that obscures a feature of the applicant's face;

(6) Be an original photograph or a photographic copy developed from the negative of an original photograph; and

(7) Not be an image produced by a digital camera, computer, or a copier or other copy equipment or copy machine.

Section 3.[2.] The department shall:

(1) Consider an application incomplete if an applicant submits a photograph that it determines does not comply with the requirements of Section 1 of this administrative regulation; and

(2) Notify the sheriff who transmitted the application form and the applicant pursuant to the provisions of 502 KAR 13:080 [~~this administrative regulation~~].

JOHN ADAMS, Commissioner

APPROVED BY AGENCY: October 11, 2007

FILED WITH LRC: October 15, 2007 at 10 a.m.

CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

JUSTICE AND PUBLIC SAFETY CABINET  
Department of Kentucky State Police  
(As Amended at ARRS, December 10, 2007)

502 KAR 13:080. Incomplete application for certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers [~~who are honorably retired~~].

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the Kentucky State Police to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the reasons an application form shall be deemed incomplete and the required procedures for the department.

Section 1. Definition. (1) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.

Section 2. An application form shall not be considered complete if.

- (1) It does not meet the requirements of 502 KAR 13.010;
- (2) It contains erroneous information; or
- (3) An item of the application form is illegible or incomprehensible [cannot be read or understood].

Section 3.2. If the department determines that an application form is incomplete pursuant to the Section 1 of this administrative regulation, the department shall notify the applicant on a "Missing Information/Document" of the:

- (1) Reason the application form has been determined to be incomplete; and
- (2) The action required to complete the application form.

Section 4.3. Incorporation by Reference. (1) "Missing Information/Document," 01/09/07, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700.

JOHN ADAMS, Commissioner

APPROVED BY AGENCY: October 11, 2007

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CONTACT PERSON: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

**707 KAR 1:320 became effective on November 5, 2007.  
The text inadvertently left out of the December 1, 2007  
Administrative Register of Kentucky is as follows:**

**EDUCATION CABINET  
Kentucky Board of Education  
Department of Education  
(As Amended at IJC on Education, November 5, 2007)**

**707 KAR 1:320. Individual education program.**

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818 [300.1-300.662], 20 U.S.C. [1221(e)], 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 157.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires [mandates that] the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of [to generally carry out] these programs. KRS 156.035 authorizes [sets forth the authority of] the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 [1400 et seq.] and 34 C.F.R. 300.100 [Part 300] require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for the development, implementation, and revision of individual education programs for each child with a disability.

Section 1. Individual Education Programs. (1) An LEA shall ensure [the] an IEP is developed and implemented for each child with a disability served by that LEA, and for each child with a disability placed in or referred to a private school or facility by the LEA.

(2) Kentucky School for the Deaf and Kentucky School for the Blind, in conjunction with the child's resident LEA, shall ensure that an IEP is developed and implemented for each child with a disability placed in its school by an ARC.

(3) At the beginning of the school year, an LEA shall have an IEP in effect for each child with a disability within [in] its jurisdiction [at the beginning of each school year].

(4) An LEA shall ensure the IEP:

- (a) Is in effect before specially designed instruction and related services are provided to a child with a disability; and
- (b) Is implemented as soon as possible following an ARC meeting.

(5) An LEA (or state agency responsible for developing the child's IEP) shall ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying the special education and related services to the child is being determined.

(6) An LEA shall ensure that:

(a) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service providers who are responsible for its implementation;

(b) Prior to the implementation of the IEP, each implementer is informed of his specific responsibilities related to implementing the child's IEP; and

(c) The specific accommodations, modifications, and supports are provided for the child in accordance with the IEP.

(7) An IEP shall be in place for all eligible children aged three (3) through five (5).

Section 2. ARC Meetings. (1) An LEA shall ensure that each child has an ARC which includes the membership in Section 3 of this administrative regulation and is initiated and conducted for the purpose of developing, reviewing, and revising the IEP.

(2) An ARC shall not have to be convened in order to make minor, nonprogrammatic, changes to an IEP, such as typographical errors, incorrect directory information about the student (such as birth date, age, grade, address, or school, etc.), and other information required on the IEP that was agreed upon by the ARC but incorrectly recorded. If the LEA makes any minor, nonprogrammatic changes, all members of the ARC shall be given a copy of the changes and an explanation as to why the changes were made within ten (10) school days of the changes being made. If any member of the ARC objects to the changes, an ARC meeting shall be convened within a reasonable period of time to discuss the changes.

(3) An LEA shall ensure that within sixty (60) school days following the receipt of the parental consent for an initial evaluation of a child:

(a) The child is [will be] evaluated; and

(b) If the child is eligible, specially designed instruction and related services will be provided in accordance with the IEP.

(4) [(3)] Within this sixty (60) school-day period, an LEA shall ensure that the ARC meeting to develop an IEP for the child is conducted within thirty (30) days of the determination that the child is eligible.

(5) The sixty (60) school-day timeline shall not apply in the following situations:

(a) If the child moves to a new LEA after consent for the initial evaluation is given but before the evaluation can be completed, as long as the new LEA is making sufficient progress to complete the evaluation and the parent and the LEA agree to a specific time when the evaluation shall be completed; or

(b) If the parent repeatedly fails or refuses to produce the child for evaluation.

(6) [(4)] An LEA shall ensure that the ARC:

(a) Reviews each child's IEP periodically, but no less than annually, to determine whether the annual goals for the child are being achieved; and

(b) Revises the IEP in accordance with 34 C.F.R. 300.324(b)(1)(ii), [as appropriate to address:

1. Any lack of expected progress toward the annual goals;
2. Any lack of expected progress in the general curriculum, if appropriate;
3. The results of any reevaluation;
4. Information about the child provided by or to the parents;
5. The child's anticipated needs; and
6. Other matters.]

Section 3. ARC Membership. (1) An LEA shall ensure that the ARC for each child with a disability includes:

- (a) The parents of the child;
- (b) Not less than one (1) [A] regular education teacher of the child (if the child is or may be participating in the regular education environment) to provide information about the general curriculum for same aged peers;
- (c) Not less than one (1) [A] special education teacher of the child or a special education teacher who is knowledgeable about the child's suspected disability or, if appropriate, at least one (1) special education provider of the child,
- (d) A representative of the LEA who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general curriculum and the availability of the resources of the LEA;
- (e) An individual who can interpret the instructional implications of evaluation results who may be a member of the team described in paragraphs (b) through (d) of this subsection;
- (f) An individual who has knowledge or special expertise regarding the child at the discretion of the parent or the LEA;
- (g) Related services personnel, as appropriate; and
- (h) The child, if appropriate

(2) A member of the ARC team listed above may be dismissed from attendance, in whole or in part, if the parents and the LEA agree in writing prior to the ARC meeting that the attendance of that member is not necessary because the member's area of curriculum or related services is not being modified or discussed in the ARC meeting.

(3) A member of the ARC team listed above may be dismissed from attendance, in whole or in part, if the parents and the LEA agree in writing prior to the ARC meeting to waive the attendance of that member even though the member's area of curriculum or related services will be discussed or modified if

(a) The parent and the LEA consent in writing to the excusal; and

(b) The member submits, in writing, to the parent and the ARC team, input into the development of the IEP prior to the meeting.

(4) If the purpose of the ARC is to discuss transition services for a child with a disability as described in Section 4(3) and (4) of this administrative regulation, the child shall be invited to the ARC. If the child does not attend the ARC meeting, the LEA shall take other steps to ensure that the child's preferences and interests are considered. A public agency that is likely to be responsible for providing or paying for transition services shall also be invited to the extent appropriate and with the consent of the parent or the child, if the child is an emancipated adult. If the representative of the other public agency does not attend, the LEA shall take other steps to obtain participation of the other agency in the planning of any transition services.

(5) If the purpose of the ARC is to determine eligibility for a child suspected of having a specific learning disability, the ARC shall also include the personnel listed in 707 KAR 1:310, Section 2(1), in addition to the personnel listed in subsection (1) of this section.

(6) If the purpose of the ARC meeting is to discuss transition from the early intervention program into the preschool program, the LEA shall invite a representative of the early intervention program to the initial transition ARC meeting if the parent requests. At the ARC meeting, the child's previous Individualized Family Service Plan that was used by the early intervention program shall be considered when developing the new IEP for the child.

Section 4. Parent Participation. (1) An LEA shall ensure that one (1) or both of the parents of a child with a disability are present at each ARC meeting or are afforded the opportunity to participate. Except for meetings concerning a disciplinary change in placement or a safety issue, an LEA shall provide written notice to the parents of a child with a disability at least seven (7) days before an ARC meeting. The [Parents shall be notified of the meeting early enough to ensure that they will have an opportunity to attend, and the] meeting shall be scheduled at a mutually-agreed-on time and place.

(2) An LEA shall send an ARC meeting invitation to the parents which includes:

- (a) The purpose;
- (b) Time;
- (c) Location of the meeting;
- (d) Who will be in attendance; [and]
- (e) Notice [information] that the parents may invite people with knowledge or special expertise of the child to the meeting; and
- (f) Notice [information] that the LEA will invite representatives from the early intervention program to the initial meeting, if the parents request it.

(3) If the child is in the eight grade year, or has reached the age of fourteen (14) years [at least fourteen (14) years of age], the invitation shall state [indicate] that a purpose of the meeting will be the development of a statement for the need for transition services for [of] the child and state [indicate] that the child is invited. This subsection shall apply to a child younger than fourteen (14) years of age if determined to be appropriate by the ARC.

(4) For a child with a disability, beginning no [not] later than the IEP that will [be] in effect when the child turns sixteen (16) [if the child is at least sixteen (16) years of age], the invitation shall state [indicate] that a purpose of the meeting is the consideration of the postsecondary goals and needed transition services for the child and shall include the identity of any other agency that is invited to send a representative. This subsection shall apply to a child younger than sixteen (16) years of age if determined to be appropriate by the ARC.

(5) An LEA shall ensure parent participation in the ARC meeting if the parent is unable to attend by using other methods, which may include individual or conference telephone calls or video conferencing.

(6) An ARC meeting may be conducted without a parent in attendance if the LEA is unable to convince the parent that he should attend. The LEA shall have a record of its attempts to arrange a mutually-agreed-on time and place, which may include:

- (a) Detailed records of telephone calls made or attempted and the results of those calls;
- (b) Copies of correspondence sent to the parents and any responses received; and
- (c) Detailed records of visits to the parent's home or place of employment and the results of those visits.

(7) When using an interpreter or other action, as appropriate, an LEA shall take whatever action is necessary to ensure that the parents understand the proceedings at the ARC meeting, including arranging for an interpreter for [the] parents with deafness or whose native language is other than English.

(8) An LEA shall give the parent a copy of the child's IEP at no cost to the parent.

Section 5. Contents of IEP. (1) An ARC shall consider in the development of an IEP:

- (a) The strengths of the child and the concerns of the parents for enhancing the education of their child;
- (b) The results of the initial or most recent evaluation of the child; [and]
- (c) As appropriate, the results of the child's performance on any general state or districtwide assessment programs; and
- (d) the academic, developmental, and functional needs of the child.

(2) An ARC shall:

(a) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(b) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(c) In the case of the child who is blind or visually impaired, provide for instruction in Braille and the use of Braille, unless the ARC determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(d) Consider the communication needs of the child;

(e) In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(f) Consider whether the child requires assistive technology.

(3) All the factors listed in this section shall be considered, as appropriate, in the review, and if necessary, revision of a child's IEP.

(4) Once the ARC has considered all the factors listed in this section the ARC shall include a statement on the IEP indicating the needs for a particular device or service (including an intervention, accommodation, or other program modification), if any are needed, in order for the child to receive a free appropriate public education (FAPE)

(5) A regular education teacher of the child, as a member of the ARC, shall, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of appropriate.

(a) Positive behavioral interventions and strategies for the child,

(b) Supplementary aids and services; and

(c) Program modifications or supports for school personnel that will be provided for the child.

(6) An ARC shall not be required to include information under one (1) component of a child's IEP that is already contained under another component of the child's IEP.

(7) The IEP for each child shall include:

(a) A statement of the child's present levels of academic achievement and functional [educational] performance, including how the child's disability affects the child's involvement and progress in the general curriculum as provided in the Kentucky Program of Studies, 704 KAR 3:303, or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

(b) A statement of measurable annual goals, including academic and functional goals, designed [benchmarks or short-term objectives related to]:

1. Meet [Meeting] the child's needs that result from the disability to enable the child to be involved in and progress in the general curriculum as provided in the Kentucky Program of Studies, 704 KAR 3:303, or for preschool children, as appropriate, to participate in appropriate activities; and

2. Meet [Meeting] the child's other educational needs that result from the disability.

(c) A LEA's procedures may determine the use of benchmarks or short-term objectives for a child's IEP.

(8) An IEP shall include a statement of the specially designed instruction and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable to be provided to the child, or on behalf of the child. There shall also be a statement of the program modifications and supports for school personnel that will be provided for the child to:

(a) Advance appropriately toward attaining the annual goals;

(b) Be involved and make progress in the general curriculum;

(c) Participate in extracurricular and other nonacademic activities; and

(d) Be educated and participate with other children with and [or] without disabilities.

(9) An IEP shall contain an explanation of the extent, if any, to which the child will not participate with nondisabled children in regular classes.

(10) An IEP shall contain a statement of any individual accommodations [modifications] to be provided the child in order to participate in the state or districtwide assessment. These accommodations [modifications] shall be based on the requirements contained in 703 KAR 5.070, Inclusion of special populations in the state-required assessment and [the] accountability programs.

(11) If the ARC determines that the child meets the criteria for participation in the alternate portfolio, as provided in 703 KAR 5.070, it shall provide a statement of its decision and the reasons for the decision.

(12) An IEP shall include the projected date of the beginning of

the services and modifications listed on the IEP and the anticipated frequency, location (whether [i.e.] regular or special education), and duration of the services and modifications.

(13) An IEP shall include a statement of:

(a) How the child's progress toward meeting the annual goals will be measured, and

(b) When periodic reports on the progress the child is making toward meeting the annual goals, (which may include the use of quarterly or other periodic reports concurrent with the issuance of report cards) will be provided.

(14) At least one (1) year prior to the child reaching the age of majority, the IEP shall include a statement that the child has been informed of the child's rights under 707 KAR Chapter 1, and that the rights will transfer to the child upon reaching the age of majority.

(15) The IEP shall also include the requirements for transition services for eligible students as detailed in Section 7 of this administrative regulation.

Section 6 Program for Students who Transfer. (1) If a child with a disability transfers between LEAs (school districts) within the same academic year within Kentucky, and had an IEP in effect in Kentucky, the child shall be provided a free, appropriate public education by the receiving LEA including services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the receiving LEA adopts the previous IEP or develops, adopts, and implements a new IEP.

(2) If a child with a disability transfers from an LEA outside Kentucky to an LEA within Kentucky (between school districts) within the same academic year (from outside the state), and had an IEP in [if] effect in the other [in another] state, the child shall be provided a free, appropriate public education by the receiving LEA including services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the receiving LEA conducts an evaluation, if determined necessary, and develops, adopts, and implements a new IEP if the child is a child with a disability as defined in 707 KAR 1.280, Section 1(9) [meets the eligibility criteria as defined in 707 KAR 1.280].

(3) To facilitate the transition of a child who transfers, the receiving LEA shall take reasonable steps to obtain the child's records, including the IEP, supporting documents, and any other records, including discipline records, relating to the provision of special education and related services. The previous LEA shall take reasonable steps to promptly respond to such requests from the receiving LEA. (How the parents will be regularly informed, at least as often as the school or LEA informs parents of the progress of all children.

(14) A parent shall be informed of:

(a) Their child's progress toward the annual goals; and

(b) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.]

Section 7. [6.] Transition Services. (1) In the child's eighth grade year or when the child has reached the age of fourteen (14) years, and in alignment with the child's Individual Learning Plan (as required by 704 KAR 3:305) [Beginning at age fourteen (14)], or earlier [younger] if determined appropriate by the ARC, the IEP for a child with a disability shall include a statement of the transition service needs of the child under the applicable components of the child's IEP that focus on the child's course of study. This statement shall be updated annually.

(2) By the child's 16th birthday, the IEP shall include:

(a) Appropriate, measurable, postsecondary goals based upon age-appropriate transition assessments, related to training, education, employment, and, where appropriate, independent living skills, and

(b) The transition services (including the course of study) needed to assist the child in reaching these goals. (For a child beginning at age sixteen (16), or younger if determined appropriate by the ARC, the IEP for a child with a disability shall include a statement of needed transition services for the child, including, if appropriate, a statement of the interagency responsibilities or any

needed linkages.]

(3) Transition services for children with disabilities may be special education, if provided as specially designed instruction or related services, and if required to assist a child with a disability to benefit from special education.

(4) ~~At least one (1) year prior to the child reaching the age of majority, the IEP shall include a statement that the child has been informed of his rights under 707 KAR Chapter 1 and that the rights will transfer to the child upon reaching the age of majority.~~

(5) If an agency, other than the LEA, (or state agency responsible for developing the child's IEP) fails to provide the transition services described in the IEP, the LEA (or the state agency responsible for developing the child's IEP) shall reconvene the ARC to identify alternative strategies to meet the child's transition objectives set out in the IEP.

(5) [(6)] A participating agency shall not be relieved of the responsibility under IDEA to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of the agency.

Section 8, [7-] Private School Placements by the LEA. (1) Prior to [an LEA] placing a child with a disability in, or referring a child to, a private school or facility, the LEA shall initiate and conduct an ARC meeting to develop an IEP for the child.

(2) The LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(3) After a child with a disability is placed in a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA.

(4) If a private school or facility initiates the meetings, the LEA shall ensure that the parents and LEA staff are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented. If a child with a disability is placed by the LEA in a private school or facility, the LEA shall remain responsible for compliance with 707 KAR Chapter 1.

(5) An LEA that places ~~or refers~~ a child with a disability in or refers a child to a private school shall ensure that the child:

(a) Is provided specially designed instruction and related services in conformance with an IEP that meets the standards of 707 KAR Chapter 1, and at no cost to the parents;

(b) Is provided an education that meets the standards of the LEA, including general curriculum standards; and

(c) Has all the rights of any child with a disability served by the LEA.

Section 9, [8-] IEP Accountability. (1) An LEA shall provide specially designed instruction and related services to each child with a disability in accordance with his IEP and shall make a good faith effort to assist the child in achieving ~~to achieve~~ the goals, ~~and~~ objectives, or benchmarks listed in the IEP.

(2) An LEA shall be responsible for including children with disabilities in the statewide assessment as provided in 703 KAR 5:070 [Chapter 5].

(3) The provisions of this administrative regulation shall not limit the parents' right to ask for revision of the child's IEP or to invoke due process procedures if the parents feel that good faith efforts are not being made.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

KEVIN M. NOLAND, Interim Commissioner of Education  
KEITH TRAVIS, Chairperson

APPROVED BY AGENCY: June 14, 2007

FILED WITH LRC: June 14, 2007 at 11 a.m.

707 KAR 1:340 became effective on November 5, 2007.  
The text inadvertently left out of the December 1, 2007  
Administrative Register of Kentucky is as follows:

EDUCATION CABINET  
Kentucky Board of Education  
Department of Education

(As Amended at Interim Joint Committee on  
Education, November 5, 2007)

707 KAR 1:340. Procedural safeguards and state complaint procedures.

RELATES TO. KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818 [300.1-300.662], 20 U.S.C. [1221(e)], 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires ~~mandates that~~ the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of ~~to generally carry out~~ these programs. KRS 156.035 authorizes ~~sets forth the authority of~~ the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 [1400 et seq.] and 34 C.F.R. 300.100 [Part 300] require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes procedural safeguards for children with disabilities and their parents and lists the requirements for filing a written complaint.

Section 1. Parent Participation in Meetings. (1) A parent of a child with a disability shall be afforded an opportunity to:

(a) Inspect and review all education records with respect to identification, evaluation, and educational placement of the child and the provision of FAPE to the child; and

(b) Participate in all ARC meetings concerning his child.

(2) An LEA shall provide parents a written notice of ARC meetings in accordance with this administrative regulation.

(3) A LEA may conduct an ARC meeting without a parent in attendance if the LEA is unable to convince the parent to attend. The LEA shall keep a record of its attempts to arrange a mutually agreed on time and place. These records may include:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; or

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(4) LEA staff shall not be limited by 707 KAR Chapter 1, from having informal, ~~scheduled,~~ or unscheduled conversations on issues which may include:

(a) Teaching methodology ~~[if these issues are not addressed in the child's IEP];~~

(b) Lesson plans ~~[if these issues are not addressed in the child's IEP];~~

(c) Coordination of service provision ~~[if these issues are not addressed in the child's IEP]; or~~

(d) Preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later ARC meeting.

Section 2. Independent Educational Evaluation. (1) A parent of a child with a disability shall have a right to obtain an independent educational evaluation of the child.

(2) If a parent requests an independent educational evaluation ~~[Upon receiving the request]~~, the LEA shall provide information to

the parent about where an independent educational evaluation may be obtained and the LEA's applicable criteria for independent educational evaluations.

(3) If a parent requests [The parent's request for] an independent educational evaluation at public expense because the parent disagrees with an evaluation obtained by the LEA, [shall be subject to the following:

(a) The LEA shall be given the opportunity to conduct a complete evaluation on the child prior to the request;

(b) Upon receiving the request] the LEA shall, without unnecessary delay:

(a) [1-] Initiate a due process hearing to show that its evaluation is appropriate; or

(b) [2-] Ensure that an independent educational evaluation is provided at public expense unless the LEA demonstrates in a due process hearing that the evaluation obtained by the parent did not meet LEA criteria;

(4) [(e)] The LEA may ask for the parent's reasons why he objects to the LEA's evaluation; however, the parent shall not be required to respond and the LEA shall not delay its action under [paragraph (b)-of this] subsection (3) of this section while waiting for a response from a parent; and

(5) [(d)] If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the LEA uses when it initiates an evaluation. Aside from these criteria, the LEA shall not impose any other conditions or timelines relating to obtaining an independent educational evaluation at public expense.

(6) [(e)] A parent shall be entitled to only one (1) independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parents disagree.

(7) [(4)] If the LEA initiates a due process hearing after receiving a request for an independent educational evaluation, and the final decision is that the LEA's evaluation is appropriate, the parent still shall have the right to an independent educational evaluation, but not at public expense.

(8) [(5)] If the parent obtains an independent educational evaluation at public or private expense and it meets the agency criteria, results of the evaluation shall be considered by the LEA in any decision made with respect to the provision of a free, appropriate public education (FAPE) to the child.

(9) [(6)] If a due process hearing officer, as part of a hearing, requests an independent educational evaluation, the cost of the evaluation shall be at public expense.

Section 3. Notice to Parents [of Procedural Safeguards] (1) Except for meetings concerning a disciplinary change in placement or a safety issue, an LEA shall provide written notice to the parents of a child with a disability at least seven (7) days before a meeting in which the LEA: [An LEA shall provide written notice to the parents of a child with a disability in accordance with 34 C.F.R. 300.503] [a reasonable time] [before the LEA.]

(a) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(b) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) An LEA shall provide written notice to the parents of a child with a disability at least twenty-four (24) hours before a meeting concerning a safety issue or a change in placement due to a violation of a code of student conduct.

(3) The notice required by subsections (1) and (2) of this section [This notice] shall include:

(a) A description of the action proposed or refused by the LEA;  
(b) An explanation of why the LEA proposes or refuses to take the action;

(c) A description of any other options that the LEA considered and the reasons why those options were rejected;

(d) A description of each evaluation procedure, test, record, or report the LEA used as a basis for the proposed or refused action;

(e) A description of any other factors that are relevant to the

LEA's proposal or refusal;

(f) A statement that the parents of a child with a disability have protection under the procedural safeguards in 707 KAR Chapter 1 and 34 C.F.R. 300.504, and if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and

(g) Sources for the parents to contact to obtain assistance in understanding the provisions of this section.

(4) [(3)] The notice required by subsections (1) and (2) of this section shall be written in language understandable to the general public and provided in the native language or other mode of communication of the parent unless it is clearly not feasible to do so. If the native language of the parent is not a written language, the LEA shall take steps to ensure that the notice is translated orally or by other means so that the parent understands the content of the notice and that there is written evidence of [the [the] translation.

Section 4. Procedural Safeguards Notice. (1) [(4)] A copy of the procedural safeguards notice [including (e-g), parent's rights] shall be given to the parents of a child with a disability one (1) time a school year. A copy of the notice shall also be provided to the parent:

(a) Upon initial referral or parent request for evaluation;

(b) Upon the receipt of the first state written complaint;

(c) Upon the receipt of the first filing of a due process hearing in a school year;

(d) In accordance with the discipline procedures in which a decision is made to remove a student, which [that] constitutes a change in placement, because of a violation of the code of student conduct; and

(e) Upon request by a parent.

(2) [Upon invitation of each ARC meeting;

(e) Upon reevaluation of the child; and

(d) Upon receipt of a request for a due process hearing-

(6) The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1 and 34 C.F.R. [section] 300.504.

Section 5. [4-] Parental Consent. (1) An LEA shall obtain informed parental consent before conducting an initial evaluation or reevaluation and before the initial provision of specially designed instruction and related services.

(2) If the [a] parent of a child with a disability refuses to consent to the initial evaluation or fails to respond to a request to provide consent, the LEA may pursue the initial evaluation by using the procedures in this administrative regulation [707 KAR 1:349] for mediation, dispute resolution meeting, or a due process hearing. However, the LEA shall still be considered to be in compliance with 707 KAR 1:300, Section 4, and 707 KAR 1:310 if it declines to pursue the evaluation.

(3) If the child is in the custody of the state and is not residing with the child's parent, the LEA is not required to obtain consent from the parent for initial evaluations to determine the eligibility of the child if:

(a) Despite reasonable efforts, the LEA cannot discover the whereabouts of the parent(s);

(b) The rights of the parent(s) have been terminated by a court of competent jurisdiction; or

(c) The rights of the parent(s) to make educational decisions have been subrogated by a court of competent jurisdiction and an individual appointed by the court to represent the child has given consent to the initial evaluation.

(4) In order to document the reasonable efforts taken by the LEA to discover the whereabouts of the parent(s), the LEA shall keep a record of its attempts which may include:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(5) If the parent of a child refuses to give consent for the provision of initial specially designed instruction and related services or



fails to respond to a request for consent, the LEA shall not provide such services and shall not use a due process hearing or mediation procedures in order to obtain agreement or a ruling that the services may be provided to the child.

(6) The LEA shall obtain consent before conducting a [fee] reevaluation of a child with a disability. If the parent refuses [refused] to consent, the LEA may pursue the reevaluation by using the procedures in this administrative regulation [707 KAR 1:340] for mediation, dispute resolution meeting, or a due process hearing.

(7) Parental consent for reevaluation shall not be required if the LEA can demonstrate that:

(a) It made reasonable efforts to obtain such consent and followed [followed] the procedures in subsection (4) of this section [Section 1(4)] of this administrative regulation to show those efforts; and

(b) The parent failed to respond.

(8) Parental consent shall not be required before:

(a) Reviewing existing data as part of an evaluation or reevaluation; or

(b) Administering a test or other evaluation that is administered to all children unless consent is required of all parents before the administration of the test or evaluation.

(9) The LEA shall not be considered to be in violation of the requirements to make a free appropriate public education available to the child if the LEA decides not to pursue the consent through due process procedures set out in Sections 9 and 11 of this administrative regulation and the LEA shall not be required to convene an ARC meeting or develop an IEP if the parent of the child:

(a) Fails to respond or refuses to consent to a request for evaluation;

(b) Fails to respond or refuses to consent to a request for services; or

(c) Refuses to consent to a reevaluation. [If the parent of a child fails to respond or refuses to consent to a request for evaluation, or to consent for services or refuses to consent for a reevaluation:

(a) The LEA shall not be considered to be in violation of the requirements to make a free appropriate public education available to the child if the LEA decides not to pursue the consent through due process procedures set out in 707 KAR 1:340, Sections 9 and 11; and

(b) The LEA shall not be required to convene an ARC meeting or develop an IEP.]

Section 6. Representation of Children. (1) If the child is a foster child and does not reside with the child's parents, the LEA shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation. The LEA shall not be required to obtain this consent if:

(a) Despite reasonable efforts, the LEA cannot discover the whereabouts of the parent [The whereabouts of the parents cannot be determined after reasonable efforts have been made to do so];

(b) The rights of the parents have been terminated in accordance with state law; or

(c) The rights of the parents to make educational decisions have been subrogated by a court in accordance with state law and the consent for initial evaluation has been given by [a] someone appointed by the judge to represent the child.

(2) The biological or adoptive parent, when attempting to act as the parent and when more than one (1) party meets the definition of parent [is qualified] under 707 KAR 1:280(43) [to act as parent], shall be presumed to be the parent for purposes of 707 KAR Chapter 1 unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child. If there is a judicial order that identifies a specific person or persons who meets the definition of "parent" in Section 1(43)(a) through (d) of 707 KAR 1:280 [under 707 KAR 1:280(43)(a)-(d)] to act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.

(3) An [A] LEA shall ensure the rights of a child are protected by appointing [determining an educational representative for the child. A LEA shall appoint] a surrogate parent to make educational decisions for the child if:

(a) No individual can be identified as a parent [parents] as

defined in 707 KAR 1:280 [can be identified];

(b) An LEA, after reasonable efforts, cannot discover the whereabouts of the parents;

(c) The child is a ward of the state; or

(d) The child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. [Section] 11431 [et seq].

(4) The LEA shall [must] keep a record of the reasonable efforts it made to discover the whereabouts of the parents, [as listed in subsection (3)(b) of this section] such as:

(a) Detailed records of the telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(5) An LEA shall have a procedure for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child. The surrogate parent of the child shall have all the rights afforded parents under Part B of IDEA, 34 C.F.R. Part 300, and 707 KAR Chapter 1, to make decisions about educational issues for a child.

(6) An LEA shall have a procedure for selecting surrogates. A surrogate:

(a) Shall not be an employee of the Kentucky Department of Education, the LEA, or any other agency that is involved in the education or care of the child;

(b) Shall not have any [an] personal or professional interest that conflicts with the interests of the child; and

(c) Shall have knowledge and skills that ensure adequate representation of the child.

(7) A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the LEA solely because he or she is paid by the LEA to serve as a surrogate parent.

(8) In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in [subsection (6) of this section [above]] until a surrogate parent can be appointed that meets all the requirements of this section.

(9) An LEA shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) days after there is a determination by the LEA that the child needs a surrogate.

(10) The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

(11) When a child with a disability reaches the age of majority, all rights under 707 KAR Chapter 1 shall transfer from the parents to the child, unless the child has been declared incompetent under KRS Chapter 387 in a court of law. An [A] LEA shall notify the child with a disability and the parents of the transfer of the rights.

Section 7. State Complaint Procedures. (1) The following procedures shall apply to the Kentucky Department of Education as to written complaints submitted pursuant to 34 C.F.R. 300.151 through 300.153 [300.660 through 300.662]:

(a) The Kentucky Department of Education shall have [A time limit] of sixty (60) days after a complaint [complaint] is filed to carry out an independent investigation, if necessary;

(b) The [An opportunity by the] complainant and the LEA shall each have an opportunity to submit additional information about any allegation in the complaint;

(c) The [An opportunity for the] LEA shall have an opportunity to respond to the complaint including, at least:

1. A proposal to resolve the complaint; and

2. An opportunity for the parent who has filed the complaint and the LEA to voluntarily engage in mediation;

(d) The department shall [A] review of all relevant information; and

(e) The department shall issue a written decision addressing each allegation in the complaint and containing the findings of fact and conclusions and the reasons for the final decision.

(2) Any organization or individual including someone from out-



side the state may file a signed written complaint under this administrative regulation.

(3) The complaint shall include:

(a) A statement that the LEA or other public agency providing educational services to identified students has violated a requirement of 707 Chapter 1 or IDEA administrative regulations;

(b) The facts on which the statement is based;

(c) A signature and contact information for the complainant;

(d) Name and residence of the child, or contact information, if the child is homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Section 11431 [et seq.];

(e) Name of the school the child is attending;

(f) A description of the nature of the problem, including facts related to the problem;

(g) A proposed resolution of the problem to the extent it is known and available to the complainant at the time of the filing; and

(h) Information indicating that the violation did not occur more than one (1) year prior to the date of the receipt of the complaint.

(4) The party filing the complaint shall forward a copy to the LEA.

(5) The complainant, parent, or the LEA shall have a right to appeal the written decision from a complaint to the Commissioner of the Kentucky Department of Education. This appeal shall be filed within fifteen (15) business days of the receipt of the decision.

(6) The Kentucky Department of Education shall allow an extension of the time limit under subsection (1)(a) of this section only if exceptional circumstances exist or if the parent and the LEA agree to extend the time line to engage in mediation or other alternative means of dispute resolution.

(7) The Kentucky Department of Education shall ensure the final decision from a complaint shall be effectively implemented. To achieve compliance, the Department of Education may apply:

(a) Technical assistance activities;

(b) Negotiations; or

(c) Corrective actions, [for an initial evaluation or a reevaluation, the LEA may continue to pursue those evaluations by requesting a due process hearing or using the mediation procedures.

(2) Parental consent shall not be required for reevaluation if the LEA can demonstrate that it has taken reasonable measures to obtain the consent, and the child's parent has failed to respond. To show the reasonable measures taken, the LEA shall keep documentation which may include:

(a) The records of the telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Records of the visits made to the parent's home or place of employment and the results of those visits.

Section 9, [5-] Right to Mediation and Due Process Hearings.

(1) An LEA and parent of a child with a disability shall have the right to request mediation from the Kentucky Department of Education to resolve any disputes that may arise under 707 KAR Chapter 1.

(2) A parent or an LEA may initiate a due process hearing on any of the matters described in the written notice relating to identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child or the refusal to initiate or change the identification, evaluation, or educational placement of the child.

(3) When a hearing is initiated, the LEA shall inform the parent of the availability of mediation to resolve the dispute.

(4) The LEA shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or if a parent or LEA initiates a hearing.

Section 9, [6-] Mediation Rights. (1) The mediation process, if chosen, shall:

(a) Be voluntary;

(b) Not be used to deny or delay a parent's right to a due process hearing under Sections 9[5] and 11[7] of this administrative regulation or 34 C.F.R. 300.507, or to deny any other rights afforded under this administrative regulation or IDEA Subpart E; and

(c) Be conducted by a qualified and impartial mediator trained in effective mediation techniques.

(2) The Kentucky Department of Education shall maintain a list of qualified mediators who shall:

(a) Not be an employee of the Kentucky Department of Education or the LEA that is involved in the education or care of the child;

1. Any LEA or state agency described in 34 C.F.R. section 300.194; or

2. Any part of the Kentucky Department of Education that is providing direct services to a child who is the subject of the mediation process.

(b) Be chosen at random for the mediation process; and

(c) Not have a personal or professional conflict of interest.

(3) The Kentucky Department of Education shall bear the cost of the mediation process.

(4) The sessions in the mediation process shall be:

(a) Scheduled in a timely manner not to exceed sixty (60) days, and

(b) Held at a location that is convenient to both parties to the dispute.

(5) In a mediation session in which a resolution is reached by the parties, a legally-binding written agreement shall be executed that:

(a) Sets forth the resolution and a timeline in which it shall be implemented;

(b) States that all discussions that occurred in the mediation process shall be confidential; and

(c) May not be used as evidence in any subsequent due process hearing or civil proceeding.

(6) Both the parent and a representative of the LEA who has the authority to bind the LEA shall sign the agreement. The agreement shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.

(7) Mediation may address issues surrounding the education of the child, including ongoing alleged violations of IDEA, compensatory education, or any other issue related to the child's enrollment in the school district.

Section 10 Dispute Resolution. (1) Within fifteen (15) days of receiving notice of parental request for a due process hearing, the LEA shall convene a meeting with the parent and the relevant member or members of the ARC who have specific knowledge of the facts identified in the due process hearing request. The parent and the LEA shall determine the relevant ARC members to attend the resolution session. A representative of the LEA who has decision-making authority on behalf of the LEA shall (must) also attend this meeting. An attorney for the LEA shall not attend the meeting unless an attorney accompanies the parent.

(2) The purpose of this meeting is:

(a) To allow the parents to discuss their due process hearing request;

(b) To discuss the facts that formed the basis of the request, and

(c) To give the LEA an opportunity to resolve the complaint.

(3) This meeting shall not take place if the parents and the LEA agree in writing to waive the meeting or agree to use the mediation process.

(4) If the parties reach a resolution to the dispute, the parties shall execute a legally-binding agreement that is:

(a) Signed by both the parent and a representative of the LEA who has the authority to bind the LEA; and

(b) Is enforceable in any state court of competent jurisdiction or a district court of the United States.

(5) The dispute resolution agreement may be voided by either party within three (3) business days of the agreement's execution.

(6) If the LEA has not resolved the complaint to the satisfaction of the parents within thirty (30) days of the receipt of the due process hearing request, the due process hearing may occur.

(7) The timeline for issuing a final decision pursuant to 34 C.F.R. 300.515 [the resolution of the due process hearing] shall begin at the expiration of the thirty (30) day timeline referred to in subsection (6) of this section, except for adjustments allowed in subsections (11) and (12) [subsection (11)] of this section.

(8) The failure of the parent who filed [filing] the due process hearing request to participate in the resolution meeting shall delay the timelines for the resolution process and the due process hearing until the meeting is held unless the:

(a) The parties have jointly agreed to waive the resolution process or use mediation [; or

(b) The LEA has not resolved the due process complaint to the satisfaction of the parent within thirty (30) days of the receipt of the due process hearing request in which case the due process hearing may occur.]

(9) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may request, at the conclusion of the thirty (30) day period, that a hearing officer dismiss the parent's due process hearing request.

(10) The LEA shall [must] keep a record of the reasonable efforts made to obtain the participation of the parents in the resolution meeting such as:

(a) Detailed records of telephone calls made or attempted and the results of those calls.

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of any visits made to the parent's home or place of employment and the results of those visits.

(11) If the LEA fails to hold the resolution meeting within fifteen (15) days of receiving the notice of a parent's due process hearing request or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the forty-five (45) day due process hearing timeline in 34 C.F.R. 300.515.

(12) The forty-five (45) day timeline for the due process hearing in 34 C.F.R. 300.515 starts the day after one (1) of the following events:

(a) Both parties agree in writing to waive the resolution meeting;

(b) After either the mediation or resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible; or

(c) If both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later the parent or the LEA withdraws from the mediation process.

Section 11. [7-] Hearing Rights. (1) The parent of a child with a disability or the attorney representing the child, or the LEA that files a [filing the] request for a hearing shall provide notice to the Kentucky Department of Education, to request a hearing. The notice shall contain:

(a) The name of the child;

(b) The address of the residence of the child;

(c) The name of the school the child is attending;

(d) A description of the nature of the problem; and

(e) Facts relating to the problem and a proposed resolution to the extent known and available to the parents at the time.

(2) The Kentucky Department of Education shall provide a model form entitled "Request for a Due Process Hearing", that meets [containing] these requirements to assist parents in filing a request a due process hearing.

(3) A party shall not have a due process hearing until the party, or the attorney representing the party, files a notice that contains the information listed in subsection (1) of this section [above]. This notice shall be provided to the other party and to the Kentucky Department of Education. [The Kentucky Department of Education shall not deny or delay a parent's right to a due process hearing for failure to provide the notice in 707 KAR 1:340, Section 7(1) and (2)-]

(4) The procedures included in KRS Chapter 13B and IDEA Subpart E shall apply to a due process hearing.

Section 12. [8-] Appeal of Decision. (1) A party to a due process hearing that is aggrieved by the hearing decision may appeal the decision to members of the Exceptional Children Appeals Board as assigned by the Kentucky Department of Education. The appeal shall be perfected by sending, by certified mail, to the Kentucky Department of Education, a request for appeal, within thirty (30) calendar days of the date of the hearing officer's decision.

(2) A decision made by the Exceptional Children Appeals Board shall be final unless a party appeals the decision to state circuit court or federal district court.

(3) Except as provided in [707 KAR 1:340,] Sections 14 and 15 of this administrative regulation [40 and 42], during the pendency of any administrative or judicial proceeding, including the dispute resolution meeting the child involved in the hearing or appeal shall remain in the child's [his] current educational placement, unless the LEA and the parent agree to another placement. However, the child shall not be required to remain in the child's current educational placement if the complaint involves an application for initial services for a child who [that] is transitioning from the early intervention program into preschool and the child is no longer eligible for the early intervention program due to age. In that case the LEA shall not be required to provide the early intervention services the child had been receiving but would be required to provide any special education and related services that the child is eligible for and that are not in dispute between the parent and the LEA.

(4) If the hearing involves an application for initial admission to public school, and if there is consent of the parents, the child shall be placed in the public school until the proceedings are final.

[Section 9. Representation of Children. (1) An LEA shall ensure the rights of a child are protected by determining an educational representative for the child. An LEA shall appoint a surrogate parent to make educational decisions for the child if:

(a) No parents as defined in 707 KAR 1:280 can be identified;

(b) An LEA, after reasonable efforts, cannot discover the whereabouts of the parents; or

(c) The child is a ward of the state.

(2) An LEA shall have a procedure for determining whether a child needs a surrogate parent for assigning a surrogate parent to the child. The educational representative of the child shall have all the rights afforded parents under Part B of IDEA and 707 KAR Chapter 1 to make decisions about educational issues for a child and to give written informed consent when necessary under administrative regulation.

(3) An LEA shall have a procedure for selecting surrogates. A surrogate-

(a) Shall not be an employee of the Kentucky Department of Education, the LEA, or any other public agency that is involved in the education or care of the child;

(b) Shall not have an interest that conflicts with the interests of the child; and

(c) Shall have knowledge and skills that ensure adequate representation of the child.

(4) A surrogate parent may be an employee of a private agency that provides noneducational care for the child if that person meets the standards in this section. A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the LEA solely because he or she is paid by the LEA to serve as a surrogate parent.

(5) The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

(6) When a child with a disability reaches the age of majority, all rights under 707 KAR Chapter 1 shall transfer from the parents to the child, unless the child has been declared incompetent under KRS Chapter 387 in a court of law. A LEA shall notify the child with a disability and the parents of the transfer of the rights.]

Section 13. [10-] Discipline Procedures. (1) The ARC may consider any circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(2) School personnel may remove a student with a disability who violates a code of student conduct from the student's placement to an appropriate interim alternative education setting, another setting, or suspension, for not more than ten (10) consecutive school days (to the extent those alternatives are applied to children without disabilities).

(3) School personnel may remove a student with a disability from the student's current placement for additional periods of time of not more than ten (10) consecutive school days in the same

school year for separate incidents of misconduct as long as those removals do not constitute a change in placement because of disciplinary removals.

(4) If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability (as described in Section 14 of this administrative regulation), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities for removals that would exceed ten (10) consecutive school days.

(5) After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, educational services as described in subsection (6)(a) and (b) of this section [below] shall be provided during any subsequent days of removal.

(6) A child with a disability who [that] is removed from the child's current placement for more than ten (10) consecutive school days shall:

(a) Continue to receive a free, appropriate public education so as to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(b) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services, and modifications, that are designed to address the behavior violation so that it does not recur.

(7) The services described in subsection (6) of this section may be provided in an interim alternative educational setting.

(8) An [A] LEA shall be required to provide educational services to a child with a disability during periods of removal of ten (10) or less school days in the same school year if it provides services to children without disabilities who are similarly removed.

(9) After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, and the current removal is for not more than ten (10) consecutive school days and is not a change in placement because of disciplinary removals, school personnel, in consultation with at least one (1) of the child's teachers, shall determine the extent to which educational services explained in subsection (6) of this section are needed.

(10) If a removal is a change in placement because of disciplinary removals, the child's ARC shall convene within ten (10) school days after the change of placement is made and shall determine the appropriate educational services for the child. If the student has been placed in an interim alternative educational setting, the LEA shall invite staff from that alternative setting to the ARC meeting.

**Section 14. Manifestation Determination.** (1) Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the relevant members of the child's ARC, as determined by the LEA and the parent, shall [must] convene a meeting to review all relevant information in the student's file, including the child's IEP, any teacher observations, teacher-collected data, and any relevant information provided by the parents to determine:

(a) If the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or

(b) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct shall be determined to be a manifestation of the child's disability if the ARC determines that either of the conditions [conditions] in subsection (1)(a) or (b) of this section was met.

(3) If the ARC determines that the condition described in subsection (1)(b) of this section was met, the LEA shall take immediate steps to remedy those deficiencies.

(4) If the ARC determines that the conduct was a manifestation of the child's disability, the ARC shall:

(a)1 Conduct a functional behavioral assessment, unless [;

(a) the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred and had implemented a behavioral intervention plan for the child; or

2 [(a)] Review the behavioral intervention plan, (if one had already been developed) and modify it, as necessary, to address the behavior; and

(b) Return the child to the placement from which the child was removed unless [the LEA and the parent agree to a change of placement as part of the modification of the behavioral intervention plan or because of the special circumstances explained in subsection (5) of this section.

(5) School personnel may remove a child with a disability to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is a manifestation of the child's disability, if the child:

(a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA;

(b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA; or

(c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA.

(6) On the date on which a decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of the code of student conduct, the LEA shall notify the parents of the decision and provide the parents with a copy of the procedural safeguards in accordance with [as contained in] Section 4 of this administrative regulation.

(7) The ARC of the child shall determine the interim alternative educational setting and the services for any child removed under Sections 13(4), (10) and 14(5) of this administrative regulation.

**Section 15. Appeals from Placement Decisions.** (1) The parent of a child with a disability who disagrees with any decision regarding placement under Section 13 or 14 of this administrative regulation or the manifestation determination, or an [a] LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others may request a hearing by filing using the procedures contained in Sections 8 and 11.

(2) A hearing officer shall hear and make a determination regarding an appeal requested pursuant to [in] subsection (1) of this section.

(3) In making a determination, the hearing officer may order a change in placement of a child with a disability. The hearing officer may:

(a) Return the child to the placement from which the child was removed, or

(b) Order a change in placement of the child to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the child or others.

(4) When an appeal under this section has been requested pursuant to this section, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time provided for in subsection (3)(b) of this section, whichever occurs first, unless the parent and the LEA agree otherwise.

(5) An appeal under this section shall:

(a) Be conducted in an expedited manner;

(b) Shall occur within twenty (20) school days from the date the request is filed; and

(c) Shall result in a determination within ten (10) school days after the hearing.

If the child with a disability is removed for more than ten (10) school days during a school year, a change of placement shall be considered to have occurred for purposes of disciplinary actions.

(2) To the extent removal would be applied to children without disabilities, school personnel may remove a child with a disability from the child's current placement for not more than a total of ten (10) school days for a violation of school rules.

(3) A child's ARC may order a change in placement of a child with a disability to an appropriate interim educational setting for the

same amount of time that a child without a disability would be subject to discipline, but for not more than forty-five (45) days, if:

(a) The child carries or possesses a weapon to or at school, a school function, or school premises; or

(b) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function. An illegal drug shall not include a substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under the authority of any other provision of the Controlled Substances Act, 21 U.S.C. section 812(e) or under any other provision of federal law.

(4) No later than ten (10) business days after commencing an action that results in a change of placement, the LEA shall convene an ARC to:

(a) Develop a plan for conducting a functional behavior assessment, if an assessment has not been conducted;

(b) Develop and implement a behavioral intervention plan if a functional behavioral assessment has already been conducted; or

(c) Review and modify the assessment and the plan, as necessary, to address the behavior if a functional behavioral assessment has been conducted and a behavioral intervention plan has been developed.

(5) As soon as practicable after developing the functional behavioral assessment described in subsection (4)(a) of this section, and completing the assessments required by the plan, the LEA shall convene an ARC to develop appropriate behavioral interventions to address the behavior and shall implement those interventions.

(6) A due process hearing officer may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) days if the hearing officer, in an expedited due process hearing:

(a) Determines that the LEA has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

(b) Considers the appropriateness of the child's current placement;

(c) Considers whether the LEA has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(d) Determines the interim alternative educational setting that is proposed by the school personnel who have consulted with the child's special education teacher, meets the requirements contained in subsection (7) of this section.

(7) An interim alternative educational setting in which a child is placed shall:

(a) Enable the child to continue to progress in the general curriculum;

(b) Enable the child to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and

(c) Include services and modifications to address the behavior to prevent the behavior from recurring.

**Section 11. Manifestation Determination Review.** (1) If an action is contemplated that will result in a change of placement for a child with a disability who has engaged in behavior that violated any rule or code of conduct of the LEA that applies to all children:

(a) Not later than the date on which the decision to take action is made, the parents shall be notified of the decision and provided with a copy of procedural safeguards; and

(b) Immediately, if possible, but in no case later than ten (10) school days after the date on which the decision to take that action is made, a review by the ARC and other qualified personnel shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(2) In conducting the review, the ARC may determine that the behavior of the child was not a manifestation of the child's disability if:

(a) The ARC first considers, in terms of the behavior subject to the disciplinary action, all relevant information including evaluation and diagnostic results, relevant information supplied by the par-

ents, observation of the child and the child's IEP and placement;

(b) After the review of this information, the child's IEP and placement are reviewed in relationship to the behavior subject to the disciplinary action to determine if the IEP and placement were appropriate and the specially designed instruction and related services, supplementary aids and services and the behavior intervention strategies were provided consistent with the child's IEP and placement; and

(c) The ARC determines if the child's disability impaired the ability of the child to understand the impact and consequences of the behavior and if the child's disability impaired the ability of the child to control the behavior.

(3) If the ARC determines that any of the standards in subsection (2) of this section were not met, the behavior shall be considered a manifestation of the child's disability.

(4) If the ARC identifies any deficiencies in the child's IEP or placement or in its implementation, the LEA shall take immediate steps to remedy those deficiencies.

(5) If after the manifestation determination review, the ARC determines the behavior was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to all children may be applied to the child in the same manner in which they would be applied to children without disabilities.

(6) If the LEA initiates disciplinary procedures applicable to all children, it shall ensure that all special education and disciplinary records are transmitted to the school personnel making the final determination regarding the disciplinary actions as to the child with disabilities.

(7) A parent may request a due process hearing to contest the decision reached in a manifestation determination review or with any decision regarding placement under this section. The hearing shall be arranged in an expedited manner.

**Section 12. Challenges to Placement in an Interim Alternative Educational Setting and Manifestation Determination.** (1) If a parent requests a hearing to challenge the placement of his child in an interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting until the decision is final or until the expiration of the time period for the placement, whichever occurs first, unless the parent and the LEA agree otherwise.

(2) If a child is placed in an interim alternative educational setting and school personnel propose to change the child's placement after expiration of the time period, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (i.e., the child's placement prior to the interim alternative educational setting) unless the school personnel maintain that it is dangerous for the child to be in the current placement, in which case the LEA may request an expedited due process hearing.

(3) A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a rule or code of conduct of the LEA, may assert any of the protections provided for in this administrative regulation if the LEA had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

**Section 16. [43] Basis of Knowledge.** (1) An LEA shall be deemed to have knowledge that a child is a child with a disability if:

(a) The parent of the child has expressed concern in writing (or orally if the parent cannot express it in writing) to supervisory or administrative personnel of the appropriate LEA or to the teacher of the child, that the child is in need of special education and related services;

(b) [The behavior or performance of the child demonstrates the need for these services, in accordance with 707 KAR 1:280;

(c) The parent of the child has requested an evaluation pursuant to the requirements in 707 KAR 1:300; or

(d) [(d)] The teacher of the child, or other personnel of the LEA, has expressed concern about a pattern of [the] behavior or performance of the child directly to the director of special education or [to] other supervisory personnel of the LEA [in accordance with the LEA's child find or special education referral system].

(2) An LEA shall not be deemed to have knowledge that a child is [may be] a child with a disability if, after [as a result of] receiving information that the child may have a disability, the LEA:

(a) The LEA conducted an evaluation and determined the child was not a child with a disability;

(b) The LEA [or] determined an evaluation was not necessary and provided notice to the parents of these determinations; or

(c) The parents refused to consent to an evaluation or refused initial services.

(3) If an LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities.

(4) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the child shall remain in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

Section 17, [44.] Reporting to Law Enforcement Agencies. (1) Notwithstanding any provisions of 707 KAR Chapter 1, an agency may report a crime committed by a child with a disability to appropriate authorities.

(2) If an LEA reports a crime committed by a child with a disability, it shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to the extent the transmission is permitted by the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g.

~~[Section 15. State Complaint Procedures. (1) The following procedures shall apply to the Kentucky Department of Education as to written complaints submitted pursuant to 34 C.F.R. 300.660 through 300.662:~~

~~(a) A time limit of sixty (60) days after a complaint is filed to carry out an independent investigation, if necessary;~~

~~(b) An opportunity by the complainant and the LEA to submit additional information about any allegation in the complaint;~~

~~(c) A review of all relevant information; and~~

~~(d) A written decision addressing each allegation in the complaint containing the findings of fact and conclusions of the reasons for the final decision.~~

~~(2) Any organization or individual including someone from outside the state may file a signed written complaint under this administrative regulation.~~

~~(3) The complaint shall include:~~

~~(a) A statement that the LEA or other public agency providing educational services to identified students has violated a requirement of 707 Chapter 1 or IDEA regulations;~~

~~(b) The facts on which the statement is based; and~~

~~(c) Information indicating that the violation did not occur more than one (1) year prior to the date of the filing of the complaint, unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than three (3) years prior to the date of the complaint.~~

~~(4) The complainant, parent or the LEA shall have a right to appeal the written decision from a complaint to the Commissioner of the Kentucky Department of Education. This appeal shall be filed within fifteen (15) business days of the receipt of the decision.~~

~~(5) The Kentucky Department of Education shall allow an extension of time limit under subsection (1)(a) of this section only if exceptional circumstances exist.~~

~~(6) The Kentucky Department of Education shall ensure the final decision from a complaint shall be effectively implemented. To achieve compliance, the Department of Education may apply:~~

~~(a) Technical assistance activities;~~

~~(b) Negotiations; or~~

~~(c) Corrective actions.]~~

Section 18, [46.] Incorporation by Reference. (1) [The] "Request for a Due Process Hearing", [dated] February 2007 [July 14, 2009], is [hereby] incorporated by reference.

(2) This material [document] may be inspected, copied, or obtained, subject to applicable copyright law, [and copied] at the Division of Exceptional Children Services, Department of Education, Capital Plaza Tower, 500 Mero Street, Eighth Floor, Frankfort, Kentucky, Monday through Friday, 8 a.m. to [through] 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

KEVIN M. NOLAND, Interim Commissioner of Education

KEITH TRAVIS, Chairperson

APPROVED BY AGENCY: June 14, 2007

FILED WITH LRC: June 14, 2007 at 11 a.m.

#### EDUCATION CABINET

Office of Employment and Training

Division of Unemployment Insurance

(As Amended at ARRS, December 10, 2007)

#### 787 KAR 1:090. Unemployed Worker's Reporting Requirements

RELATES TO: KRS 341.350, 341.380, 342.360, 341.370

STATUTORY AUTHORITY: KRS 151B.020, 341.115(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

341.115(1) authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes the registration and reporting requirements that an unemployed worker shall meet to draw benefits, the date when a claim shall be valid, the length of time a claim may be backdated, and the procedures for electronic, telephone, and mail claims.

Section 1. Registration for Work. (1) An unemployed worker shall be registered for work with a state employment service before he shall be eligible to receive benefits. A registration shall be considered filed if the unemployed worker completes the registration process.

(2) When an unemployed worker completes an initial application for benefits or reopens a claim, he shall be assigned a group classification code A or B based upon his reemployment prospects.

(a) Group A shall consist of any worker who is unemployed and is not subject to definite recall within a period of twelve (12) weeks from the date of filing of the initial or reopened claim.

(b) Group B shall include any worker who is:

1. Unemployed and has definite return prospects with his last employer within a period of twelve (12) weeks from the date of filing of the initial or reopened claim;

2. Unemployed because of a labor dispute in the establishment where he has been employed; or

3. A member of a union which shall be responsible for securing future employment.

(3) During any benefit year, an unemployed worker shall be assigned a different group classification code if review of his reemployment prospects reveals that a different classification is appropriate.

(4) The completion of an initial application for benefits shall serve as work registration for any group "B" unemployed worker.

Section 2. Initial or Reopened Claims for Benefits. (1) In order for an unemployed worker to file an initial or reopened claim for benefits, he shall complete:

(a) An internet claim registration through the Web site provided by the agency for that purpose at <https://uiclaims.des.ky.gov/ebenefit/>;

(b) A telephone claim registration through the call center provided by the agency for that purpose; or

(c) An in person claim registration by reporting to a state employment service office that provides unemployment insurance assistance.

(2) If any issues regarding the unemployed worker's eligibility as provided by KRS 341.350 or a potentially disqualifying circumstance as provided by KRS 341.360 or 341.370 are detected, a fact finding investigation shall be conducted during which the unemployed worker shall be responsible for:

(a) Providing picture identification and valid proof of the worker's Social Security number from the Social Security Administration; and [proof of identity (picture identification), proof of existence (birth certificate), and a valid social security card, and]

(b) Presenting all facts in support of the [his] application [at which the claimant may present all facts in support of his application]

(3) The initial or reopened claim shall be dated as of the first day of the week in which the unemployed worker completes the procedure established in subsection (1) of this section.

(4) Upon the presentation by the unemployed worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary shall backdate the initial or reopened claim to the first day of the week in which the worker became unemployed, or the second calendar week preceding the date the worker filed, whichever is later.

Section 3. Claiming Weeks of Benefits. (1) Once an unemployed worker has filed an initial claim and established a benefit year, he shall claim his benefits on a biweekly basis.

(a) The unemployed worker shall claim either one (1) or both of the weeks of benefits;

(b) Except as provided in paragraph (d) of this subsection, for the first two weeks of benefits claimed following the effective date of an initial or reopened claim, the unemployed worker shall claim his benefits during the calendar week following the second week of the period, except that a worker shall not claim benefits until thirteen (13) days after the day on which the worker filed the initial or reopened claim.

(c) Except as provided in paragraph (d) of this subsection, for every two (2) week period of benefits being claimed following the effective date of the initial or reopened claim, the unemployed worker shall claim his benefits during the calendar week following the second week of the period;

(d) Upon the presentation by the unemployed worker of reasons the secretary finds to be good cause for the failure of the worker to claim his benefits during the prescribed week, the secretary shall allow the worker to claim benefits for the two (2) calendar weeks preceding the date on which the worker claimed his benefits. In this case the worker shall next be eligible to claim benefits for the two (2) calendar weeks following the weeks of benefits claimed late.

(2) Except as provided in subsection (3) of this section, the unemployed worker shall complete a claim for benefits:

(a) Through the web site provided by the agency for that purpose at <https://uiclaims.des.ky.gov/ebenefit/>; or

(b) By telephone through the interactive voice response system provided by the agency for that purpose.

(3)(a) The secretary shall direct an unemployed worker to claim benefits by mail if it is not possible for the worker to claim by either option provided in subsection (2) of this section due to

1. Unavailability of those options for the type of benefits claimed;
2. Unavailability of those options due to technical problems; or
3. A physical or mental condition preventing the worker from using those options

(b) A continued claim shall cover the week or weeks indicated on the Continued Claim Form.

(c) Any claim filed by mail shall be considered filed on the day it is deposited in the mail and postmarked as established in 787 KAR 1:230, Section 1(2).

(d) The provisions of this administrative regulation governing the dating and backdating of a continued claim shall also apply to a claim filed by mail, and unless the claim is filed within the prescribed time, it shall not be allowed.

Section 4. Employer Filed Claims. (1) An employer may file a claim on behalf of an unemployed worker if:

(a) The worker has definite recall rights within four (4) calendar weeks;

(b) The employer has a workforce of at least 100 workers at the time of the layoff;

(c) The employer submits the claim information in the required electronic format using the Mass Electronic Filing Cell Data and Formatting Guide; and

(d) Prior to the first time an employer files a claim on behalf of a worker, the employer submits a test sample of claim information and receives confirmation from the division that the information is in the required format prior to the date the period of unemployment will begin.

(2) The effective date of an employer filed claim shall be the first day of the week in which the period of unemployment began.

(3) An unemployed worker who does not file a continued claim for benefits established under an employer filed claim may file a new initial claim within the period of one (1) year from the effective date of the employer filed claim.

Section 5. Eligibility Review. The secretary may require an unemployed worker claiming benefits to report for the purpose of continued benefit eligibility review as a condition for payment of benefits. The requirement and interval for eligibility review shall be determined by:

(1) The worker's classification as established in Section 1(2) of this administrative regulation;

(2) The worker's individual employment and earning history; and

(3) The local labor market.

Section 6. (1) The secretary shall notify an unemployed worker if the secretary determines that the unemployed worker failed to file a claim for benefits or register for work within the specified time due to.

(a) The employer's failure to comply with 787 KAR Chapter 1;

(b) Coercion or intimidation exercised by the employer to prevent the prompt filing of a claim, or

(c) Failure by the division's personnel to discharge necessary responsibilities.

(2)(a) Except as provided in paragraph (b) of this subsection, an unemployed worker shall have fourteen (14) days after receipt of the notification required by subsection (1) of this section from the secretary within which to file a claim.

(b) A claim shall not be filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Continued Claim Form", revised 10/95; and

(b) "Mass Electronic Filing Cell Data and Formatting Guide", revised 03/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of the Division of Unemployment Insurance, 275 East Main Street, 2 CD, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ANDREW FRAUENHOFFER, Office of Employment

APPROVED BY AGENCY: September 29, 2007

FILED WITH LRC: October 1, 2007 at 9 a.m.

CONTACT PERSON: Larry W. Moore, Policy Analyst, Office of Employment and Training, Division of Unemployment Insurance, 275 East Main Street 2CD, Frankfort, Kentucky 40621, phone (502)-564-2900, fax (502) 564-5502.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
**Department of Labor**  
**Office of Occupational Safety and Health**  
**Division of Compliance**  
**Division of Education and Training**  
**(As Amended at ARRS, December 10, 2007)**

**803 KAR 2:310. Medical services and first aid.**

RELATES TO: KRS 338.051(3)[, 338.061], 29-C.F.R. 4940.154]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061



**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. ~~[KRS 338.061(2) provides that the board may adopt established federal standards and national consensus standards.] [29 C.F.R. 1910.151 establishes the federal standards relating to medical services and first aid.]~~ This administrative regulation establishes the medical services and first aid standards to be enforced by the Office of Occupational Safety and Health in the area of general industry.

Section 1. The employer shall ensure the ready availability of medical personnel for advice and consultation on matters of occupational health.

(1) Employers with eight (8) or more employees within the establishment shall have persons adequately trained to render first aid and adequate first aid supplies shall be readily available. Outside salesmen, truck drivers, seasonal labor, and others who, while performing their duties, are away from the premises more than fifty (50) percent of the time shall not be included in determining the number of employees.

(2) All other employers shall, in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, have a person or persons adequately trained to render first aid. Adequate first aid supplies shall be readily available.

Section 2. If the eyes or body of any person may be exposed to injurious corrosive material, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use. The facilities shall comply with the provisions of the American National Standards Institute (ANSI) Z-358.1-1990, "Standard for Emergency Eyewash and Shower Equipment", which is incorporated by reference, with the following exceptions:

(1) In a remote area if a person is visibly or audibly separated from coworkers, an audible or visible alarm shall activate to alert appropriate personnel when the unit is in use[,] or in the alternative, a two (2) way communication device shall be used. The alarm shall continue until the unit is no longer in use.

(2) A facility shall be tested according to the standard monthly.

Section 3. ~~[General industry shall comply with 29 C.F.R. 1910.151, "Medical services and first aid", and its Appendix, revised as of July 1, 2005.]~~

~~Section 4.]~~ Incorporation by reference. (1) ANSI Z-358.1-1990, "Standards for Emergency Eyewash and Shower Equipment", [1990:] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Labor, Office of Occupational Safety and Health, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

PHILIP ANDERSON, Commissioner  
LLOYD R. CRESS, Deputy Secretary  
For TERESA J. HILL, Secretary

CONTACT PERSON: David Stumbo, Health Standards Specialist, Kentucky Department of Labor, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564- 3070, fax (502) 564-1682.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
Department of Public Protection  
Office of Housing, Buildings and Construction  
(As Amended at ARRS, December 10, 2007)

815 KAR 4:010. Annual Inspection of passenger elevators.

RELATES TO KRS 198B.400, 198B.470, 198B 480, 198B.500, 198B 510, 198B 540  
STATUTORY AUTHORITY: KRS 198B.060(18), 198B.490

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 198B 490 requires the executive director to promulgate an administrative regulation governing the safety and inspection of passenger elevators as defined by KRS 198B.400(1) and (2) This administrative regulation establishes the safety standards governing the annual inspection of passenger elevators.

Section 1. Annual Inspection of Passenger Elevators and Escalators. (1) Except as provided in subsection (2) of this section, an annual inspection of a passenger elevator or escalator shall be conducted in accordance with the following standards:

(a) "Safety Code for Elevators and Escalators", ASME A17.1-2004 sections 5.10, 8.7, 8.10, and 8.11[10, 12, and 19] in their entirety with the exception of rules 2.2.4.3, 2.19.2, 2.19.3.2(A)(3), 2.26.2.33, 2.27.3.2.6, 2.27.3.3.7, 3.17.3, 3.26.10, 6.1.3.3.9, and 8.6.5.8 for existing elevators and escalators, or the edition of A17.1 Safety Code in its entirety that the elevator was originally permitted under;

(b) "Inspectors' Manual for Hydraulic Elevators", ASME A17.2.2-1997;

(c) "Inspectors' Manual for Escalators and Moving Walks", ASME A17.2.3-1998;

(d) "Safety Code for Existing Elevators and Escalators", ASME A17.3-2002,

(e) "Guide for Emergency Personnel", ASME A17.4-1999;

(f) "Elevator and Escalator Electrical Equipment", ASME A17.5-1996;

(g) "Safety Standard for Conveyors and Related Equipment", ASME B20.1-1996; and

(h) "Safety Standard for Platform Lifts and Stairway Chairlifts", ASME A18.1-2003 in its entirety with the exception of rules 5.7.1 and 10.1.2.1[.];

(i) "Automated People Mover Standards-Part 1", ANSI/ASCE/T&D1 21-05,

(j) "Automated People Mover Standards-Part 2", ASE 21-98; and

(k) "Automated People Mover Standards-Part 3", ASCE 21-00.

(2) Compliance with a later edition of the standards required by subsection (1) of this section shall be deemed equivalent and may be used by the owner or contractor in lieu of the edition specified.

Section 2. Inspection Fees. (1) The annual inspection fees for the issuance of a certificate of operation shall be as established in this subsection.

(a) The wheelchair and stair chair lift inspection fee shall be seventy-five (75) dollars.

(b) The dumbwaiter inspection fee, if under contract to inspect, shall be eighty-five (85) dollars.

(c) The limited-use limited-access (Lula) elevator inspection fee shall be \$100.

(d) The escalator and moving walk inspection fee shall be \$120.

(e) The hydraulic elevator inspection fee shall be \$100.

(f) Inspection of traction elevators. The fee for:

1. The first ten (10) floors shall be \$100; and

2. Each additional ten (10) floors, or portion thereof, shall be[is] an additional ten (10) dollars.

(2) The fee for an inspection conducted at the request of the owner or user of a unit, other than an inspection made pursuant to a permit or annual inspection, shall be based on the same fee schedule as an annual inspection in subsection (1) of this section.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Safety Code for Elevators and Escalators", ASME A17.1-2004 Sections 5.10, 8.7, 8.10, and 8.11[10, 12, and 19];

(b) Inspector's Manual for Hydraulic Elevators, ASME A17.2.2-1997;

(c) "Inspectors' Manual for Escalators and Moving Walks", ASME A17.2.3-1998;

(d) "Safety Code for Existing Elevators and Escalators", ASME A17.3-2002;

(e) "Guide for Emergency Personnel", ASME A17.4-1999;

(f) "Elevator and Escalator Electrical Equipment", ASME



A17.5-1996;

(g) "Safety Standard for Conveyors and Related Equipment", ASME B20.1-1996, and

(h) "Safety Standard for Platform Lifts and Stairway Chairlifts", ASME A18.1-2003.

(i) "Automated People Mover Standards-Part 1", ANSI/ASCE/T&D1 21-05, 2006.

(j) "Automated People Mover Standards-Part 2", ASE 21-98, 1999; and

(k) "Automated People Mover Standards-Part 3", ASCE 21-00, 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4.30 p.m.

(3) This material may also be obtained from the American Society of Mechanical Engineers, 1901 Alexander Bell Drive, Reston, Virginia 20191-4400 [United Engineering Center, 345 East 47th Street, New York, New York 10017.]

FLOYD VAN COOK, Executive Director

TIMOTHY J. LEDONNE, Commissioner

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

CONTACT PERSON: David L. Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

#### ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department of Public Protection

Office of Housing, Buildings and Construction

Division of Building Code Enforcement

(As Amended at ARRS, December 10, 2007)

#### 815 KAR 7:110. Criteria for expanded local jurisdiction.

RELATES TO: KRS 198B.040(7), 198B.050, 198B.060, 198B.070

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.060(5), (6), (18)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.060(5) and (6) authorizes a local government to petition the executive director (commissioner) to request additional plan review and inspection functions to be allocated to that local government. This administrative regulation establishes the requirements for local building departments to request and be granted expanded building code plan review and inspection jurisdiction and to collect fees for those activities.

Section 1. Uniform Criteria for Granting Expanded Jurisdiction. To petition for expanded jurisdiction pursuant to KRS 198B.060(5), a local government shall comply with the requirements established in this section.

(1) A local government shall complete the Application for Local Expanded Jurisdiction, Form BCE/EJ #1, and submit it to the office [department] together with the supporting documentation required by this administrative regulation.

(2) Certified Inspector required. The local government shall employ or contract with a person, firm, or company to perform the plans and specifications inspection or building inspection functions granted to the local government.

(a) The local government shall employ or contract with a certified electrical inspector and other code enforcement personnel and support staff necessary to enforce the Kentucky Building Code within the expanded jurisdiction.

(b) The local government shall have at least one (1) person who is a building inspector level III [certified plans and specifications inspector (Level III)], pursuant to 815 KAR 7.070 reviewing the plans and specifications and performing building inspections. The designated Level III inspector shall have a minimum of three (3) years experience in that capacity.

(3) Additional personnel. A complete list of code enforcement

personnel, including the building inspector level III [designated plans and specifications inspector] and certified electrical inspector, that shall be employed or contracted with to enforce the code within the expanded jurisdiction shall be submitted. The list of personnel shall include the name, job title and certification status of each individual.

(4) Construction activity. The local government shall provide documentation of the permits issued and fees collected for the previous calendar year, if any, and an estimation of the anticipated increase in activity with the expanded jurisdiction.

(5) Contracts with other local governments. If a person, firm, or company has been contracted to provide plans and specifications inspection functions and the person, firm, or company provides inspection services for other local governments, the documentation of permit and fee activity required by subsection (4) of this section shall be provided for each of the other local governments.

(6) Official contact person. The local government shall identify:

(a) The name and title of the chief building code official;

(b) The name of the department;

(c) The official mailing address;

(d) The phone number;

(e) The fax number; and

(f) The e-mail address, if applicable.

(7) Inclusions and exclusions.

(a) A local government's petition for expanded jurisdiction shall include:

1. A complete list of each building occupancy classification and size for which expanded jurisdiction is requested;

2. A complete list of each building occupancy classification and size for which expanded jurisdiction is not requested; and

3. A copy of the local ordinance requiring single family dwelling plan review and inspection or a statement to the effect that the local government elects not to regulate them.

(b) The minimum responsibilities required by KRS 198B.060(2) shall be maintained by the local government, unless specifically agreed otherwise in writing by the local government and the office [department].

(8) State jurisdiction. The office [department] shall retain plan review, inspection and enforcement responsibility under the Kentucky Building Code for all buildings which are:

(a) Institutional buildings;

(b) Educational buildings or other facilities required to be licensed by the Cabinet for Health and Family Services [Families and Children or Cabinet for Health Services], including day care centers, hospitals, nursing homes or other similar facilities;

(c) State-owned or leased buildings and facilities;

(d) High-hazard occupancies, unless specifically agreed in writing by the local government and the office [department]; and

(e) Industrialized building systems (including modular homes) except for site placement and assembly of modular homes which may be permitted locally upon notification from the department for each instance.

#### Section 2. Procedures for Maintaining Expanded Jurisdiction.

(1) The department shall monitor the program of local governments that have been granted additional responsibility. If the local government is found to be in violation of the requirements of this administrative regulation, the Kentucky Building Code, any terms of their agreement or KRS Chapter 198B, the office [department] may cancel the agreement, rescind the expanded jurisdiction and preempt the local program in its entirety, upon approval of the board.

(2) Each agreement for expanded jurisdiction shall be in effect for three (3) years, unless canceled

(a) By agreement of the parties in writing; or

(b) Pursuant to subsection (1) of this section.

(3) The local government shall notify the office [department] within thirty (30) days of any changes in personnel or fees during the contract period.

(4) Before the expiration of the three (3) year agreement for expanded jurisdiction, the office [department] shall reevaluate the building code enforcement program of the local government and make a recommendation to the board regarding continuation of the expanded jurisdiction and renewal of the agreement. Upon approval by [ef] the board and the local government, the office [de-

partment] shall renew its agreement for another three (3) years.

**Section 3 Local Appeals Board.** (1) The local government with expanded jurisdiction may establish a local appeals board in accordance with KRS 198B.070.

(2) If the local government establishes a local appeals board, the local government shall send a written notice to the office [department], which shall:

- (a) Identify the names of each member and their technical qualifications for being appointed to the appeals board; and
  - (b) Include the method for contacting the local appeals board.
- (3) If there is not a local appeals board, all costs incurred in processing the appeal shall be charged to the local government for each appeal filed pursuant to KRS 198B.070(5).

**Section 4. One (1) and Two (2) Family Dwellings.** (1) The local building inspection program shall not include the plan review and inspection of the construction of one (1) and two (2) family dwellings that are:

- (a) Manufactured homes;
- (b) Modular homes; or
- (c) Farm dwellings.

(2) The local building inspection program shall include permits and inspections for the foundation system and other on-site construction related to modular home installations.

**Section 5. Local Government Fees Schedule.** (1) The local fees authorized by KRS 198B.060(18), established for construction projects which continue under state jurisdiction, shall be adjusted to reflect that plan review or inspection functions will not be provided by the local government.

(2) Each local government's petition for expanded jurisdiction shall include a copy of the schedule of fees as adopted by the local legislative body.

**Section 6. Incorporation by Reference.** (1) Form BCE/EJ #1, Application for Local Expanded Jurisdiction, October, 2007, [October-2009], is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office [department] of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

FLOYD VAN COOK, Executive Director  
TIMOTHY J. LEDONNE, Commissioner  
LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

CONTACT PERSON: David Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
Department of Public Protection  
Office of Housing, Buildings and Construction  
Division of Building Code Enforcement  
(As Amended at ARRS, December 10, 2007)

**815 KAR 7:120. Kentucky Building Code.**

RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform statewide building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation establishes the Kentucky Building Code's general provisions

**Section 1. Definitions.** (1) "Board of Housing" or "board" means

the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) "Executive director" is defined by KRS 198B.010(9).

(4) "Farm" means property;

(a) Located outside the corporate limits of a municipality on at least ten (10) acres;

(b) Used for purposes set forth in the definitions of "agricultural land" and "horticultural land", established in KRS 132.010(9) and (10), respectively; and

(c) [and having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) and] Qualified by and registered with the property valuation administrator in that county.

(5) "Fire Code Official" means the State Fire Marshal, fire chief, or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety as established in 815 KAR 10:060.

(6) "Industrialized building system" or "building system" is defined in KRS 198B.010(16).

(7) "KBC" means the Kentucky Building Code as established in this administrative regulation.

(8) "Kentucky Residential Code" means the International Residential Code, 2006, as amended for application in Kentucky by 815 KAR 7:125.

(9) "Kentucky Standards of Safety" means the requirements established in 815 KAR 10:060, which serve as the fire prevention code for existing buildings as well as a supplement to this code.

(10) "Manufactured home" is defined by KRS 198B.010(23) and 227.550(7).

(11) "Modular home" means an industrialized building system, which is designed to be used as a residence and which is not a manufactured or mobile home.

(12) "Office" is defined by KRS 198B.010(11)

(13) "Ordinary repair" is defined by KRS 198B.010(19).

(14) "Single-family dwelling" or "one (1) family dwelling" means a single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation, and which shall not be connected to any other unit or building.

(15) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(16) "Two (2) family dwelling" means a building containing not more than two (2) dwelling units which are connected.

**Section 2. Administration and Enforcement of the Building Code.** (1) Notwithstanding the requirements of the International Building Code 2006, the Kentucky changes established in the 2007 Kentucky Building Code shall be mandatory and shall supersede any conflicting provision of the international code.

(2)(a) Except as provided in paragraph (b) of this subsection and as superseded by the provisions of this administrative regulation and the 2007 Kentucky Building Code, the International Building Code 2006, shall be the mandatory state building code for Kentucky for all buildings.

(b) One (1) and two (2) family dwellings and townhouses shall be governed by 815 KAR 7:125.

**Section 3. State Plan Review and Inspection Fees.** The fees required by this section shall apply for plan review and inspection by the office.

(1) Fast track elective.

(a) A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee.

(b) The additional fifty (50) percent fee shall not be less than \$400 and not more than \$3,000

(c) The entire fee shall be paid with the initial plan submission.

(2) New buildings

(a) The office's inspection fees shall be calculated by:

1. Multiplying the total building area under construction by the

cost per square foot of each occupancy type as listed in subsection (3) of this section; and

2. Computing the square footage by the outside dimensions of the building.

(b) The fee for buildings with multiple or mixed occupancies may be calculated using the cost per square foot multiplier of the predominant use.

(3) Table 121.3.1, Basic Office Fee Schedule. The basic plan review or inspection fee shall be:

- (a) Assembly occupancies, eight and one-half (8.5) cents;
- (b) Business occupancies, seven and one-half (7.5) cents;
- (c) Day care centers, seven and one-half (7.5) cents;
- (d) Educational occupancies, seven and one-half (7.5) cents;
- (e) Frozen food plants, six and one-half (6.5) cents;
- (f) High hazard occupancies, seven and one-half (7.5) cents;
- (g) Industrial factories, six and one-quarter (6.25) cents;
- (h) Institutional occupancies, eight and one-half (8.5) cents;
- (i) Mercantile occupancies, seven and one-half (7.5) cents;
- (j) Residential occupancies, seven and one-half (7.5) cents;
- (k) Warehouses, five and one-half (5.5) cents; or
- (l) All other nonresidential, six and one-half (6.5) cents.

(4) Additions to existing buildings.

(a) Plan review fees for additions to existing buildings, which shall not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with the schedule listed in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition.

(b) The minimum fee for review of plans under this subsection shall be \$200.

(5) Change in use.

(a) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in subsection (3) of this section by using the total square footage of the entire building or structure under the new occupancy type as determined by the outside dimensions.

(b) The minimum fee for review of plans under this subsection shall be \$200.

(6) Alterations and repairs.

(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of.

1. Multiplying the cost for the alterations or repairs by 0.0025; or

2. Multiplying the total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.

(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.

(c) The minimum fee for review of plans under this subsection shall be \$200.

(7) Specialized fees. In addition to the fees listed in subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:

(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule:

1. An inspection of four (4) through 200 sprinklers shall be a fee of \$150;

2. An inspection of 201 through 300 sprinklers shall be a fee of \$175;

3. ~~An~~ inspection of 301 through 400 sprinklers shall be a fee of \$210;

4. An inspection of 401 through 750 sprinklers shall be a fee of \$250; and

5. An inspection of over 750 sprinklers shall be a fee of \$250 plus twenty (20) cents per sprinkler over 750.

(b) Fire detection system review fee:

1. Zero to 20,000 square feet shall be \$150; and

2. Over 20,000 square feet shall be \$150 plus twenty (20) dollars for each additional 10,000 square feet in excess of 20,000 square feet.

(c) The standpipe plan review fee shall be \$150. The combination stand pipe and riser plans shall be reviewed under the automatic sprinkler review fee schedule.

(d) Carbon dioxide suppression system review fee:

1. One (1) through 200 pounds of agent shall be \$150; and

2. Over 200 pounds of agent shall be \$150 plus two (2) cents per pound in excess of 200 pounds.

(e) Clean agent suppression system review fee:

1.a. Up to thirty-five (35) pounds of agent shall be \$150; and

b. Over thirty-five (35) pounds shall be \$150 plus six (6) cents per pound in excess of thirty-five (35) pounds.

2. The fee for gaseous systems shall be five (5) cents per cubic foot and not less than \$150.

(f) Foam suppression system review fee.

1. The fee for review of a foam suppression system shall be fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.

2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed under the automatic sprinkler review fee schedule.

3. The fee for review of plans under subparagraph 1 of this paragraph~~this section~~ shall not be less than \$150 or more than \$1,500.

(g) The commercial range hood review fee shall be \$150 per hood

(h) Dry chemical systems review fee (except range hoods). The fee for review of:

1. One (1) through thirty (30) pounds of agent shall be \$150, and

2. Over thirty (30) pounds of agent shall be \$150 plus twenty-five (25) cents per pound in excess of thirty (30) pounds.

(i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be \$100 for the first tank, plus fifty (50) dollars for each additional tank and \$100 per piping system including valves, fill pipes, vents, leak detection, spill and overfill detection, cathodic protection or associated components.

(j) Boiler and unfired pressure vessel fees. Plan review fees of boiler and unfired pressure vessel installations shall be in accordance with 815 KAR 15:027.

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "International Building Code, 2006 ", First Edition, International Code Council, Inc.; and

(b) "2007 Kentucky Building Code", Ninth Edition~~Second Printing, October, 2007~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

FLOYD VAN COOK, Executive Director

TIMOTHY J. LEDONNE, Commissioner

LLOYD R. CRESS, DEPUTY Secretary

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CONTACT PERSON: David L. Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 Ext. 144, fax (502) 573-1057.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
Department of Public Protection  
Office of Housing, Buildings and Construction  
Division of Fire Prevention  
(As Amended at ARRS, December 10, 2007)

815 KAR 10:060. Kentucky standards of safety.

RELATES TO: KRS 198B.060, 198B.062, 198B.070, 198B.080, 198B.090, 198B.110, 198B.120, 198B.130, 227B.300, 227.320, 227.330, 227.990

STATUTORY AUTHORITY. KRS 227.300(1)

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 227.300(1) requires the executive director to promulgate an administrative regulation establishing the Kentucky Standards of Safety, which shall provide a reasonable degree of safety for human life against the exigencies of fire and panic and insuring against fire loss. This administrative regulation establishes the Kentucky Standards of Safety and supplements the Kentucky Building Code, promulgated as 815 KAR 7:120, in matters of fire safety.

**Section 1. Definitions.** (1) "Accepted" means that all deficiencies communicated, in writing, to the owner have been satisfactorily corrected.

(2) "Distinct fire hazard" means a condition which poses a threat to life or property, including a condition likely to unreasonably inhibit escape from danger of fire or explosion, because the property, or the practice or method of construction or operation, condition, or processes or materials being used do not afford adequate protection, since:

- (a) A fire, explosion, or asphyxiation is likely to occur; or
- (b) It may provide a ready fuel supply to augment the spread or intensity of a fire or explosion.
- (3) "NFPA" means the National Fire Protection Association.
- (4) "NICET" means the National Institute for Certification of Engineering Technologies.

**Section 2. Scope.** (1) **Applicability.** This administrative regulation shall apply to all property except one (1) and two (2) -family dwellings.

(2) **Enforcement.** This administrative regulation shall be enforced as follows:

(a) **State Fire Marshal.** The State Fire Marshal shall have primary jurisdiction over all property, unless a local government has established a fire inspection program by ordinance adopting this administrative regulation pursuant to KRS 227.320; or

(b) **Local fire chief.**

1. Except as provided in subparagraph 2 of this paragraph, the local official designated by ordinance to operate a fire inspection program pursuant to KRS 227.320 shall have primary jurisdiction for the enforcement of all property within the local governmental boundary.

2. The State Fire Marshal shall have exclusive jurisdiction over state-owned property and primary jurisdiction for code compliance for health care facilities and other facilities licensed by the Kentucky Cabinet for Health and Family Services.

**Section 3. Existing Buildings and Conditions.** (1) Buildings and conditions approved in accordance with the Kentucky Building Code which is incorporated by reference in 815 KAR 7:120 shall apply as provided in this subsection:

(a) **Minimum or maximum standard.**

1. The standards for the construction of a building constructed pursuant to the Kentucky Building Code in effect at the time of construction, and for which there has been issued a lawful certificate of occupancy, shall supersede different construction standards regarding the requirements for egress facilities, fire protection and built-in fire protection equipment established in this administrative regulation or conflicting local ordinances.

2. Methods of construction that meet the requirements of the Kentucky Building Code shall not be deemed a distinct fire hazard.

(b) **New construction.**

1. The design and construction of a new building to provide egress facilities, fire protection, and built-in fire protection equipment shall be controlled by the Kentucky Building Code.

2. An alteration, addition, or change to the structure which is within the scope of the building code shall be made in accordance with the applicable code.

(c) **Change of use.** It shall be unlawful to make a change in the use of a building or portion thereof which has the potential to create a greater hazard to the public because of increased structural or fire loading, or inadequate exits for the number of occupants, without prior approval from the authority determined under Section 2 of this administrative regulation.

(2) **Buildings and conditions approved under other codes.**

(a)1. **Pre-KBC buildings.** A building, facility, or portion thereof,

which was constructed and approved prior to the effective dates of the Kentucky Building Code and this administrative regulation, shall be maintained as previously permitted.

2. A change to the construction of the building in excess of that required by the codes at the time of construction shall not be required if the building is used and maintained as originally approved.

(b) **Previous fire code.** A building, facility, or portion thereof, which was inspected and approved or accepted pursuant to the 1996 Kentucky Fire Prevention Code shall:

- 1. Be maintained as previously approved or accepted, and
- 2. Not be required to make a modification or change if it is maintained and used as previously accepted or approved.

~~[(3) Inspection compliance. If the State Fire Marshal or local fire chief finds an existing building or facility to be in substantial compliance with this administrative regulation, the State Fire Marshal or local fire chief shall indicate so in writing.]~~

~~[(3)](4) Hazardous materials, conditions and buildings.~~

(a) If the State Fire Marshal or local fire chief determines that a distinct fire hazard exists, the fire hazard shall be remedied so as to render the property reasonably safe.

(b) The State Fire Marshal shall use the standards specified in this paragraph to identify and to order the correction of a distinct fire hazard and shall act in accordance with the procedures established in KRS Chapter 227 and Section 5 of this administrative regulation.

The following shall be applicable, except those specifically excluded codes and references:

1. NFPA 1, Uniform Fire Code, 2006 edition, and the NFPA referenced standards included in NFPA 1. The following codes and references shall be excluded from NFPA 1 for purposes of this administrative regulation:

- a. NFPA 402, Guide for Aircraft Rescue and Fire Fighting Operation, 2002 edition;
- b. NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, 2002 edition;
- c. NFPA 1031, Standard for Profession Qualifications for Fire Inspectors and Plan Examiner, 2003 edition;
- d. NFPA 5000, Building Construction and Safety Code, 2006, edition;
- e. Code reference 13.3.2.24.2, High Rise Buildings;
- f. Code reference 13.3.2.6.1, Existing Assembly Occupancies; and

g. Code reference 13.6.1.2, Portable Extinguishers, which if required, is modified to exclude the provisions for installation of portable extinguishers in the occupancies listed in Table 13.6.1.2. Portable extinguishers shall be installed as required in the occupancy chapters of NFPA 101, Life Safety Code, 2006 Edition;

2. NFPA 101, Life Safety Code, 2006 edition, and the NFPA referenced standards included in NFPA 101. The following codes and references shall be excluded from NFPA 101 for purposes of this administrative regulation:

- a. NFPA 5000, Building Construction and Safety Code, 2006 edition; and
- b. Code reference 13.3.5.1, Extinguishment Requirements;
- 3. The Kentucky Building Code, which shall apply to a new building and to an alteration, addition, or change of use in accordance with subsection (1) of this section;

4. Superseding provisions. If a provision of this administrative regulation establishes regulatory criteria different from the criteria established in a code specified in subparagraph 1 or 2 of this paragraph, the provisions of this administrative regulation shall supersede any provision incorporated by reference;

5. Modifications, alternatives, and interpretations. If the State Fire Marshal accepts or approves an alternative to a code provision or issues an interpretation and the alternative or interpretation is of general applicability, it shall be published and forwarded to all known fire inspectors and other persons requesting copies; and

6. A condition, equipment, building, facility or portion thereof, or an alternative designed to comply with the intent of a code provision which has been accepted or approved in accordance with subsection (2) of this section shall not be considered a distinct fire hazard if it is maintained and used as accepted or approved

~~[(4)](5) Abatement of fire hazards.~~ The abatement of a distinct

fire hazard pursuant to this administrative regulation shall not require construction measures which would exceed the requirements of the current edition of the Kentucky Building Code if the building were being newly constructed.

**(5)(6) Maintenance of equipment.**

(a) All fire suppression and fire protection equipment, systems, devices, and safeguards shall be maintained in good working order.

(b) This administrative regulation shall not be the basis for removal or abrogation of a fire protection or safety system or device that exists in a building or facility.

**(6)(7) Cooperation with building official.** The State Fire Marshal and the local fire chief shall coordinate and cooperate with the building code official having jurisdiction in assessing a building for relative fire safety and to assure that the proper standards are applied.

**Section 4. Permits.** (1) State permits required. A permit shall be required from the State Fire Marshal for the following types of installations:

(a) Elevator installations and alterations;

(b) Boiler installations and alterations; and

(c) Flammable, combustible, and hazardous material storage vessel installations.

(2) Local permits allowed.

(a) A permit from a local government shall not be required unless it is required by local ordinance.

(b) An inspection or permit fee, if applicable, shall be stipulated in the local adopting legislation.

**Section 5. Enforcement of Violations.** (1) Notice of deficiency. If the State Fire Marshal or local fire chief observes an apparent violation of a provision of this administrative regulation and the standards incorporated herein or other codes or ordinances under state or local jurisdiction, the State Fire Marshal or local fire chief shall prepare a written notice of deficiency, citing the applicable code provision and specifying a time period in which the required repairs or improvements shall be completed.

(2) Service of notice. The written notice of deficiency shall be served upon the owner or the owner's duly authorized agent and upon each other person responsible for the deficiency.

(3) Failure to correct deficiency.

(a) Except if an appeal is in process pursuant to Section 6 of this administrative regulation, each deficiency shall be considered a violation.

(b) If a correction required in the notice of deficiency is not completed within the time specified, the appropriate legal proceedings to compel compliance shall be requested by the authority having jurisdiction.

**Section 6. Means of Appeal.** (1) State Fire Marshal appeals.

(a) An appeal to the State Fire Marshal from a notice of deficiency issued by an employee or deputy of the State Fire Marshal shall be in writing and shall be requested prior to the completion date required by the notice.

(b) If the matter is not resolved by agreement of the affected parties and the State Fire Marshal, other appropriate legal action may be instituted pursuant to KRS Chapter 227.

(2) Local appeals. If a local government adopts an ordinance for the enforcement of this administrative regulation, the appeal from a decision of the local fire chief shall be to the person or entity as provided by the ordinance.

**Section 7. Temporary Occupancies.** A change in use, subject to Section 3(1)(c) of this administrative regulation, shall not be prohibited if the building is being used for temporary purposes, in accordance with the requirements of this section.

(1) Time limit. The use of the building shall not exceed a total of thirty (30) days in a calendar year.

(2) Prior notice. The owner of the property shall notify the State Fire Marshal or local fire chief, in writing, of the proposed new use, stating the nature of the use of the building and the precise dates and times the building is to be occupied.

(3) Inspection. In the notification, the owner shall consent to

inspection and an opportunity for the inspection of the building shall be afforded to the State Fire Marshal or local fire chief upon request.

(4) Safety requirements. The property owner shall be responsible for maintaining the fire safety of the building and shall comply with the applicable provisions of this administrative regulation for the proposed use, as required by the State Fire Marshal or local fire chief.

**Section 8. Special Provisions.** (1) Passenger elevator incidents.

(a) Notification of Chief Elevator Inspector. The owner of the building shall immediately notify the Chief Elevator Inspector of every incident involving personal injury, persons rescued from a stalled elevator by emergency or maintenance personnel, or damage to the apparatus on, about, or in connection with a passenger elevator and shall afford the Chief Elevator Inspector every facility for investigating the incident.

(b) Discontinued use of elevator. If an incident involves the failure, breakage, damage, or destruction of a part of the apparatus or mechanism, it shall be unlawful to use the device until after an examination by the Chief Elevator Inspector is made and approval of the equipment for continued use has been granted.

(c) Removal of damaged parts. If an incident involves personal injury or damage to the apparatus, it shall be unlawful to remove a part of the damaged construction or operating mechanism of the elevator or other equipment from the premises until permission has been granted by the Chief Elevator Inspector.

(2) Fire incident reporting. The fire chief or highest ranking fire department officer shall promptly notify the State Fire Marshal upon becoming aware of any of the following:

(a) A hazardous materials incident;

(b) Fire-related fatality (including a vehicle or home);

(c) Fire-related injury serious enough to become a fatality; or

(d) A fire involving major structural damage in the following buildings:

1. An [All] institutional, educational, state-owned or state-leased, or high-hazard occupancy[occupancies];

2. A business, mercantile, or industrial occupancy [All business, mercantile, and industrial occupancies] having a capacity over 100 persons;

3. An assembly occupancy [All assembly occupancies], except churches, having a capacity over 100 persons;

4. A place[Places] of religious worship [Churches] with a capacity over 400 persons and more than 6,000 square feet; or

5. Any other building more than three (3) stories in height or 20,000 square feet of floor area.

(3) Fire protection systems testing and inspection.

(a) Reporting. Except as provided in paragraph (c) of this subsection, an inspection or test required by Chapter 11, 13, or 20 of the NFPA 1, Uniform Fire Code shall be conducted and reported by a person authorized or certified by the State Fire Marshal.

(b) Inspection and test reports.

1. A required inspection or test shall be recorded on the applicable form contained in NFPA 25 or NFPA 72 and approved by the State Fire Marshal.

2. If any violations are noted, the appropriate forms shall be forwarded to the State Fire Marshal within ten (10) working days of the date of the inspection.

(c) Reporting exceptions.

1. A portable fire extinguisher or single station smoke detector inspection or test may be inspected and tested by the property owner and their agent.

2. These reports shall not be required to be filed with the State Fire Marshal.

(d) Frequency. Periodic test and inspection of a fire suppression or alarm system shall be performed as follows:

1. Fire detection and alarm systems and all fire suppression systems in buildings other than state licensed hospitals, nursing homes, and ambulatory surgical centers shall be inspected and tested for proper operation annually;

2. Fire detection and alarm systems and all fire suppression systems in state licensed hospitals, nursing homes, and ambulatory surgical centers shall be inspected and tested quarterly; and

3. Systems or components for which the manufacturer recommends more frequent checks shall be performed as described by the manufacturer's Instructions.

(e) Inspectors.

1. Fire alarm inspectors shall apply to be certified by the office on a Form FPS 33-01 and for renewals on Form FPS 33-02 and shall:

a. (i) Be qualified as NICET level two (2), level three (3), or level four (4) in fire alarm systems; or

(ii) Pass the examination for alarm inspector administered by an approved examination provider;

b. Have had at least eighteen (18) months of experience, training, or instruction in fire alarm systems within the immediately prior five (5) year period;

c. Pay a yearly certification fee of fifty (50) dollars for each classification, which shall be valid until the inspector's birth month and renewed annually;

d. Submit a passport size color photograph with the application or renewal form; and

e. (i) Have six (6) hours of continuing education from an approved provider obtained in the twelve (12) months prior to renewal; or

(ii) Provide proof of current NICET certification.

2. Penalties. A person shall not:

a. Fail to conduct an inspection in accordance with the NFPA 72 standard;

b. Submit false inspection reports;

c. Conduct inspections without first having been certified by the office as a fire alarm inspector; or

d. Make a false or misleading statement on an application for certification or renewal.

Section 9. Incorporation by Reference (1) The following material is incorporated by reference:

(a) NFPA 1, "Uniform Fire Code", 2006 edition;

(b) NFPA 101, "Life Safety Code", 2006 edition;

(c) FPS 33-01, "Application for Fire Alarm Systems Certification", April 2006; and

(d) FPS 33-02, "Renewal Application for Fire Alarm Systems Certification", April 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

FLOYD VAN COOK, Executive Director

TIMOTHY J. LEDONNE, Commissioner

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

CONTACT PERSON: David L. Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 Ext. 144, fax (502) 573-1057.

# ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department of Public Protection

Office of Housing, Buildings and Construction

(As Amended at ARRS, December 10, 2007)

## 815 KAR 20:020. Parts or materials list.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the office, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. This administrative regulation establishes an "approved parts or materials list" containing the parts and materials that have been approved for use in Kentucky.

Section 1. Definitions. (1) "ABS" means acrylonitrile-butadiene-styrene pipe.

(2) "APML" means the "Approved Parts or Materials List."

(3) "ASTM" means American Society for Testing Materials.

(4) "Code" is defined by KRS 318.010(11).

(5) "Committee" means the State Plumbing Code Committee.

(6) "Office" means the Office of Housing, Buildings and Construction.

(7) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(8) "Person" is defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) A part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.

(2) A part or material shall not be used in a drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the office as being equal to or better than other similarly approved items for inclusion in the APML. The APML may specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the office.

(b) A hearing shall be held before the committee if requested by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the office, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Frankfort, Kentucky 40601.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been reviewed by the Kentucky Plumbing Code Committee and approved by the Office and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Supernse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(g) Dual flush water closets by Caroma, USA. The water closets



ets shall use eight-tenths (8) gallons for the short flush cycle and one and six-tenths (1.6) gallons for the full flush cycle.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Sewage ejector pit-eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by A. K. Industries.

(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(g) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.

(h) Electric Drain System as manufactured by Myers for light commercial and household usage.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve;

the pressure type with the requirements[requirement] that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and [shall] be installed with the product.

3. Vitacimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater, which[and] shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130, REU-V2520 FFU-US, REU-V2520 FFUC-US, REU-V2020W-US, REU-V2020WC-US, and REU-V1616W-US pressure type, which[and] shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater, which[and] shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratones, Inc. - instantaneous water heater, which[and] shall be equipped with an approved temperature and pressure relief valve.

11. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

12. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

13. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP, which[and] shall be equipped with an approved temperature and pressure relief valve.

14. Anston electric water heaters, model numbers P-15S and P-10S, which[and] shall be equipped with an approved temperature and pressure relief valve.

15. Vaillant Corporation gas fired point of use water heater.

16. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

17. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

18. Acutemp Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/208; #100/240; #150/208; #150/240; #180/208; #180/240; #153/208; #153/240; #183/208; #183/240; #183/480 and #C183/480.

19. Hot Aqua Instantaneous Tankless Electric Water Heaters, Model Numbers, 18/125PC, 24/125PC, 24/120, 32/120, 24/240, 36/240, 48/240, 59/240, 70/240, 24/208, 35/208, 46/208, 60/208, 28/277, 42/277, 55/277, 69/277, 24/120-P, 59/240-P, 46/208-P, 55/277-P, 18/125PC and 24/125PC. This product shall not be [is not] approved for supplying hot water for showers.

20. Stiebel Eltron Tankless Water Heater: Models DHC 3, DHC 6 and DHC 8 approved for use with lavatories and sinks.

21. Bosch Aqua Star tankless water heater. Models 125X, 125B, 125S, 125BS, 125FX and 38B. All models shall be installed with temperature and pressure relief valves.

22. Controlled Energy Corporations "Powerstream" tankless water heater.

23. Ariston mini tank electric water heaters in 2.5, 4 and 6 gallon models.

24. Powerstar PS19T and PS28T Electric Instantaneous Water Heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valves.

25. Aquastar AQ240 FX (LP, NG) gas fired instantaneous water heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valve.

26. S.E.T.S. Tankless Water Heater Models: #220, #180, #165 and #145 to be installed with temperature and pressure relief valve.



27. Rinnai Continuous Flow Water Heaters: Models 2532FFU(-C), 2532W(-C), 2532FFU and 2424W(-C) all requiring an approved pressure and temperature relief valve.

28. Nontz American Corporation Tankless, Instantaneous Water Heater Models: N-042, N-063 to be installed with temperature and pressure relief valve.

29. Takagi Industrial Company USA, Inc., Instantaneous Water Heaters, Models: T-KLS; T-K JR; T-K2; T-KD20 to be installed with temperature and pressure relief valve.

30. Envirotech Systems ESI 2000 Series Tankless Water Heaters, all requiring an approved pressure and temperature relief valve.

31. QuietSide Instantaneous Water Heater Models: QVW8 - 100, 120, 175. All models shall be equipped with an approved temperature and pressure relief valve and temperature preset at 120 degrees.

32. Seisco Residential Tankless Water Heaters Model: RA 05, RA 07, RA 09, RA 11, RA 14, RA 18, RA 22 and RA 28. All models shall be equipped with an approved temperature and pressure relief valve.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Sione Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydricide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-06 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25)(a) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company, which shall have a three (3) inch vent and alternate additional waste openings shall be located in the pump chamber above the top of the base chamber.

(b) Hydromatic JB-1 System as manufactured by Hydromatic Pumps, Inc.

(26) Exemplar Energy garden solar water heater.

(27) ProSset systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. Proset E-Z flex coupling shall be approved for similar or dissimilar materials.

(28)(a) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(b) Flood-Gate Automatic Backwater Valve as manufactured by Bibby-Ste-Croix.

(c) Fullport Backwater Valve as manufactured by Mainline Backflow Products, Inc.

(29) Clamp-All Corporation Pipe Coupling Systems shall be approved size for size on dissimilar materials on new or existing installations. The use of Snap-All Increaser/Reducer transition bushings shall be included in this approval.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" shall be approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safin material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers.

(33)(a) Femco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

(b) Femco Proflex Shielded Couplings: Series 3000 for service weight cast iron to plastic, steel or extra cast iron in sizes one and one-half (1 1/2) inch to four (4) inch, Series 3001 for cast iron, plastic or steel to copper in sizes one and one-half (1 1/2) inch to two (2) inch, Series 3003 for copper to copper in one and one-half (1 1/2) inch.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe shall have been tested for the tensile strength, durability, etc., of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes.

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through twenty-four (24) inches for underground storm water drainage within a building.

(38) "Flowguard Gold" one (1) step CPVC cement for joining copper tube size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer.

(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line.

(40)(a) Canplas Industries LTD Specialty DWV Fittings: Part #3628 ABS or PVC forty-five (45) degree Discharge Closet Flange, Part #2321 Appliance (dishwasher) Wye, Part #3650A Closet Flange Kit for Concrete Installations.

(b) Flo-Bowl Waxless Leakless Toilet System as manufactured by Flo-Bowl Systems Inc.

(41)(a) Conbraco 78-RV Series In-Line Water Heater Shut-Off Thermal Expansion Control Valve preset at 125 psi to relieve thermal expansion.

(b) Watts Regulator BRV Expansion Relief Valve to relieve thermal expansion.

(42) Plastic Productions PVC "Quick Stub" approved as a solvent weld transition between tubular PVC and schedule 40 PVC.

(43) HubSett In Line Test Coupling: PVC and ABS test cou-

plings produced by HubSett Manufacturing Inc. for testing soil waste and vent systems.

(44) Viega/Ridgid ProPress System: Copper press fittings for joining copper water tubing and using an elastomeric o-ring that forms the joint. The fitting shall be made by pressing the socket joint under pressure in accordance with the manufacturer's [manufacturers] installation requirements. Approved for pipe sizes one-half (1/2) inch through four (4) inch for above slab installations only.

(45) TRIC Trenchless Systems for replacement sewers in four (4) inch and six (6) inch sizes. A video camera tape of the existing sewer shall be made to determine proper alignment. After the installation is complete, another tape shall be submitted to ensure that the installation was successful. The sewer shall be tested according to 815 KAR 20:150. The interior heat fusion bead shall be removed to provide a smooth surface with no obstruction.

(46) Envirovac Inc.: Evac Vacuum Systems Condensate Collection System approved for condensate collection and the discharge from lavatories only.

(47) Macerating Systems from Sanitary-for-All, consisting of a sump with a macerating pump, with or without a macerating toilet. The sump shall be air tight and provided with a minimum one and one-fourth (1 1/4) inch vent. These systems shall be installed in accordance with the manufacturer's recommendations and shall not be used as a primary means of waste disposal.

(48) Rhino Wet Waste Interceptor manufactured by Ecosystems Inc. to be used as a prefiltration of wet wastes before discharging to a grease trap or interceptor.

(49) Quick Snap Multi Level Flange as manufactured by Jett Plumbing Products, Inc.

(50) Sioux Chief Manufacturers Stainless Steel Swivel Ring Closet Flange.

(51) Service Weight and No-Hub Cast Iron Pipe and Fittings furnished by DWV Casting Company complying with ASTM A74, A888 and CIP1 301-00.

(52) American Pipe Lining, Inc. APL 2000, which is an epoxy lining used in restoring water distribution systems. The use of APL 2000 shall be subject to the following conditions:

- (a) A plumbing construction permit shall be required;
- (b) Installation shall be by a licensed plumber;
- (c) Water quality shall be tested before and after each project;

and

(d) A water distribution system treated with APL 2000 shall be clearly marked on all exposed piping and water heater with the following notice: "FLAMELESS TECHNIQUES MUST BE USED FOR ALL REPAIRS AND MODIFICATIONS TO THIS PIPING SYSTEM".

(53) Base Products Corporation:

(a) Water powered pump: basepump. Each model shall:

- 1. Be installed with a reduced pressure principle backflow preventer with copper piping only;
- 2. Be approved for groundwater removal only; and
- 3. Require incoming water pressure of 50 psi to operate.

(b) Battery back-up pump: hydropump.

(54) Perma-Liner Industries, Inc. Lateral Lining System.

(a) This system shall be [is] approved for pipe sizes three (3) inches through eight (8) inches for interior and exterior installations.

(b) Interior applications shall be videoed before and after installation and shall have a water or air test [five (5)-pound-air-test-or equivalent for a period of fifteen (15) minutes] as required by 815 KAR 20:150, Section 4(2) or (3).

(c) Exterior applications shall be videoed before and after and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6).

(d) A permit shall be obtained prior to an exterior or interior application.

(55) Stainless steel piping system for potable water applications manufactured by Victaulic for above ground applications only.

(56) Wallgate Classic Model CME recessed and molded handwasher/dryer.

(57) MaxLiner.

(a) This system shall be [is] approved for pipe sizes three (3) inch through ten (10) inch for interior and exterior installations.

(b) Interior applications shall be videoed before and after installation and shall have a water or air test [five (5)-pound-air-test-or equivalent for a period of fifteen (15) minutes] as required in 815 KAR 20:150, Section 4(2) or (3).

(c) Exterior applications shall be videoed before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6).

(d) Permits shall be required for both interior and exterior applications.

(58) Nuflow Technologies Inc., Nuflow System.

(a) This system shall be [is] approved for pipe sizes one and one-half (1 1/2) inch through twelve (12) inch for interior and exterior installations.

(b) Interior applications shall be videoed before and after installation and shall have a water or air test [five (5)-pound-air-test-or equivalent for a period of fifteen (15) minutes] as required in 815 KAR 20:150, Section 4(2) or (3).

(c) Exterior applications shall be videoed before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6).

(d) Permits shall be required for both interior and exterior applications.

(59) Schluter Shower System for waterproofing tiled shower installations installed per manufacturer recommendations.

(60) WATACO Manufacturing Watco Flex and Watco Flex 900 Innovator tub waste and overflow.

(61) J.R. Smith MFG CO THE BOSS TEE Series 4505 clean-out tee

FLOYD VAN COOK, Executive Director

TIMOTHY J. LEDONNE, Commissioner

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: October 10, 2007

FILED WITH LRC: October 15, 2007 at 11 a.m.

CONTACT PERSON: David Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502)573-0394, ext. 144.

#### ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department of Public Protection

Office of Housing, Buildings and Construction

Division of Plumbing

(As Amended at ARRS, December 10, 2007)

815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.

RELATES TO: KRS 318.010, 318.020, 318.040, 318.050, 318.054

STATUTORY AUTHORITY: KRS 318.040(1)(d), (2), (3), 318.050, 318.054(3)(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.040(1)(d) requires an applicant for a master or journeyman plumber's license to possess the qualifications established in KRS 318.040 and other qualifications prescribed by the executive director [directors] KRS 318.040(2) and (3) require an applicant to successfully complete an examination prescribed by the office. KRS 318.050 requires the office to establish reasonable application fees for licensure as a master or journeyman plumber. KRS 318.054(3) [318.054(2)] requires the office to establish reasonable renewal fees for master or journeyman plumbers. This administrative regulation establishes the application and examination requirements and the application and renewal fees.

Section 1. Applications for Examination for Master or Journeyman Plumber's Licenses. (1) An application for examination for a master or journeyman plumber's license shall be submitted to the Office of Housing, Buildings and Construction on:

(a) Form PLB-1, Application for License as a Master Plumber; or

(b) Form PLB-2, Application for License as a Journeyman Plumber.

(2) The application shall [be]:

(a) Be properly signed and notarized;

(b) Be accompanied by an examination fee of:

1. \$150 to take the master plumber's examination; or

2. Fifty (50) dollars to take the journeyman plumber's examination; and

(c) Include a photograph of the applicant not less than two (2) inches square nor larger than four (4) inches square taken within two (2) years of submittal.

(3) The application fee shall be submitted at least two (2) weeks prior to the date of examination and remitted by post office or express money order, bank draft or certified check payable to the Kentucky State Treasurer.

(4) After passing the examination, an applicant for a master plumber's license shall remit a license fee of \$250.

(5) After passing the examination, an applicant for a journeyman's license shall remit a license fee of sixty (60) dollars.

Section 2. Examinations for Master or Journeyman Plumber's Licenses. (1) Examination of applicants. Regular examination of applicants for a master or journeyman plumber's license shall be conducted during the months of February, May, August and November of each year. A special examination may be conducted at other times as the Office of Housing, Buildings and Construction directs.

(2) Time and place of examination. Notice of the time and place of examination shall be given by United States mail at least one (1) week prior to the date of examination to each person who has an application on file.

(3) Materials required for journeyman plumbers' examinations. An applicant for a journeyman plumber's license shall furnish the materials required for the practical examination, which are specified in the List of Required Examination Materials that is included as part of the application.

(4) The testing requirements shall be designed by the State Plumbing Examining Committee and shall be more complex for the master's examination than the journeyman's examination.

Section 3. Renewals of Master and Journeyman Plumber's Licenses. (1) Renewal fees. The annual license renewal fee shall be:

(a) \$250 for a master plumber; and

(b) Sixty (60) dollars for a journeyman plumber.

(2) Continuing education. The continuing education requirements established [set forth] in 815 KAR 20:032 shall be met.

(3) ~~(2)~~ Inactive master renewal.

(a) To place the master plumber's license in inactive status, a master plumber shall pay annually an inactive fee of \$125.

(b) An inactive master plumber shall not secure a plumbing permit, advertise, or represent himself as a qualified master plumber.

(c) To reactivate a master plumber license, the inactive master plumber shall pay an additional \$125 and comply with the continuing education requirements established [set forth] in 815 KAR 20:032.

(4) ~~(3)~~ Remittance of renewal fees. A renewal fee shall be remitted by post office or express money order, bank draft, or certified check payable to the Kentucky State Treasurer.

Section 4. Requirements for Master Plumber Applicants. Pursuant to KRS 318.040(1)(d), each person shall meet the following requirements to become licensed as a master plumber:

(1)(a) An applicant shall have:

1. A valid journeyman plumber's license for a minimum of two (2) years within the past five (5) years immediately preceding application; and

2. Been actively employed in plumbing under the supervision of a licensed master plumber for a minimum of two (2) years; or

(b) The applicant shall be a Kentucky registered engineer experienced in mechanical engineering.

(2) An applicant shall successfully complete the examination developed and administered by the State Plumbing Examining

Committee. The examination shall be designed to demonstrate that the applicant:

(a) Understands KRS Chapter 318 and 815 KAR Chapter 20;

(b) Is capable of the design of a plumbing system; and

(c) Understands the technical and practical installation techniques and principles for a safe and sanitary plumbing system.

(3) The examination shall include:

(a) Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20, and

(b) Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes and vents and the plumbing fixtures connected thereto. The proper sizing of main stacks shall be given more importance than other piping. Deductions shall be required for oversized piping and for undersized piping.

(4) The passing grade for the total examination for a master plumber shall be eighty (80) percent, with a minimum of seventy-five (75) percent obtained for each portion of the examination established in subsection (3) (a) and (b) of this section.

Section 5. Requirements for Journeyman Plumber Applicants. Pursuant to KRS 318.040(1)(d), an applicant shall meet the following requirements to become licensed as a journeyman plumber:

(1) An applicant shall have completed two (2) consecutive years experience as an apprentice plumber.

(a) Proof of this requirement shall be satisfied by submission of:

1. A W-2 form;

2. An affidavit of a Kentucky licensed master plumber [and] or

3. A plumbing license issued by another state.

(b) Completion of a two (2) year plumbing course shall be considered the equivalent of one (1) year of experience.

(2) An applicant shall successfully complete the practical and written examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate the practical and technical understanding of plumbing principles and the ability to apply those principles for a safe and sanitary plumbing system. The examination shall include:

(a) Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20;

(b) Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes and vents and the plumbing fixtures connected thereto. The proper sizing of main stacks shall be given more importance than other piping. Deductions shall be required for oversized piping and for undersized piping; and

(c) Completing a practical section in which the applicant shall demonstrate the ability to properly install plumbing by engaging in certain activities such as properly installing a no hub cast-iron project [caulking a cast-iron coil pipe spigot into a cast-iron hub] and soldering copper solder connections.

(3) The passing grade for the total examination for a journeyman plumber shall be seventy-five (75) percent, with a minimum of seventy (70) percent obtained for each portion of the examination established in subsection (2)(a), (b) and (c) of this section.

Section 6. A master plumber or journeyman plumber shall notify the office of the name of the plumber's business and its address, employer and the employer's address [his address and] each time a change of employment is made.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PLB-1, "Application for License as a Master Plumber", October 2007; and [May 2006.]

(b) Form PLB-2, "Application for License as a Journeyman Plumber", October 2007, [May 2006; and

(c) "List of Required Examination Materials", May 2006.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4 30 p.m.

FLOYD VAN COOK, Executive Director  
TIMOTHY J. LEDONNE, Commissioner

LLOYD R. CRESS, Deputy Secretary  
For TERESA J. HILL, Secretary  
CONTACT PERSON: David Reichert, General Counsel, Office  
of Housing, Buildings and Construction, 101 Sea Hero Road, Suite  
100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, ext.  
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**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
Department of Public Protection  
Office of Housing, Buildings and Construction  
Division of Plumbing  
(As Amended at ARRS, December 10, 2007)

**815 KAR 20:032. Continuing education requirements for  
[licensee] plumbers.**

RELATES TO: KRS 318.054  
STATUTORY AUTHORITY: KRS 318.054

NECESSITY, FUNCTION, AND CONFORMITY: The office is  
directed by KRS 318.130 to adopt and put into effect a State  
Plumbing Code. KRS 318.054 authorizes the office, after review by  
the State Plumbing Code Committee, to adopt continuing educa-  
tion requirements for plumbers. This administrative regulation es-  
tablishes those requirements.

Section 1. Master Plumbers. (1) Each master plumber shall  
provide proof of completion of eight (8) hours of continuing educa-  
tion prior to license renewal. The required continuing education  
shall be received within twelve (12) months prior to renewal.

(2) Continuing education courses shall relate to one (1) or  
more of the following:

- (a) Business;
- (b) Job safety;
- (c) The Kentucky state plumbing code, or
- (d) Items directly related to the plumbing trade.

Section 2. Journeyman Plumbers. (1) Each journeyman  
plumber shall provide proof of completion of eight (8) hours of con-  
tinuing education prior to license renewal. The required continuing  
education shall be received within twelve (12) months prior to re-  
newal.

(2) Continuing education courses shall consist of a minimum  
of two (2) hours on job safety. The other six (6) hours shall  
consist of:

- (a) The Kentucky state plumbing code;
- (b) Job safety ~~[-a minimum of two (2) hours];~~ or
- (c) Items directly related to the plumbing trade.

Section 3. Combined Master and Journeyman Licenses. An  
individual which is a holder of both a master and a journeyman  
license shall meet the continuing education requirements of Sec-  
tion 1 of this administrative regulation.

Section 4. Inactive Master Licenses. An inactive master  
plumber ~~shall not [is not]~~ required to complete continuing educa-  
tion ~~to maintain inactive status. If [unless]~~ the inactive licensed  
plumber wishes to activate his or her license to the status of an  
active master plumber, ~~[in which case]~~ he or she shall meet the  
requirements of Section 1 of this administrative regulation.

Section 5. Delinquent Licenses. (1) Except as provided in  
subsection (2) of this subsection prior to reinstatement, an indi-  
vidual whose master or journeyman license is delinquent shall  
complete the total number of continuing education hours per year  
that the license has been delinquent.

~~(2) [However,]~~ The number of hours necessary for reinsta-  
ment shall not exceed forty (40) hours.

Section 6. Continuing Education Courses. (1) All continuing  
education shall be completed in one or more courses approved by  
the office and the Kentucky state plumbing code committee for  
master and journeyman plumbers pursuant to 815 KAR 20:034.

(2) Continuing education courses shall be offered only by pro-

viders approved by the Office and the Kentucky state plumbing  
code committee pursuant to 815 KAR 20:034.

FLOYD VAN COOK, Executive Director  
TIMOTHY J. LEDONNE, Commissioner  
LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

CONTACT PERSON: David Reichert, General Counsel, Office  
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**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
Department of Public Protection  
Office of Housing, Buildings and Construction  
Division of Plumbing  
(As Amended at ARRS, December 10, 2007)

**815 KAR 20:034. Requirements for approval of continuing  
education courses and providers.**

RELATES TO: KRS 318.054 ~~[Chapter 318]~~  
STATUTORY AUTHORITY: KRS 318.134

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.054  
authorizes the office, after review by the State Plumbing Code  
Committee, to adopt continuing education requirements for plumb-  
ers. This administrative regulation establishes ~~[established]~~ the  
process by which providers of continuing education courses are  
registered with the office and their courses approved.

Section 1. Provider Registration. (1) The office shall maintain a  
list of approved continuing education course providers. An ap-  
proved provider shall meet the criteria established ~~[set forth]~~ in  
Section 2 of this administrative regulation.

(2) Each continuing education course provider shall register  
with the office as required by subsection (3) of this section  
before submitting course materials for approval by the office. Re-  
istration shall be valid for two (2) years from the date of issuance.

(3) Course providers shall register on Form PLB-3 provided by  
the Office and shall include the following:

- (a) The name, mailing address, email address, telephone, and  
fax numbers of the provider;
- (b) The names and addresses of any persons who have re-  
ceived or will receive any portion of revenues generated from the  
course; and
- (c) ~~[Disclose]~~ The fee, if any, to be charged to participants.
- (4) The course provider shall report to the Office any change to  
the information submitted in the initial registration within thirty (30)  
days after the [such] change takes effect.

Section 2. Continuing Education Course Approval. (1) A sepa-  
rate application for approval shall be submitted to the office on  
Form PLB-4 provided by the office for each course offered by a  
course provider.

(2) An application for approval of a continuing education  
course shall be submitted only by approved providers registered  
with the office.

(3) A continuing education course shall provide instruction in at  
least one of the subject areas specified in Section 3 of this admin-  
istrative regulation.

(4) The course application shall include the following:

- (a) A course syllabus;
- (b) Name of the course;
- (c) Name and registration number of the provider;
- (d) Name of the instructor or presenter along with his or her  
qualifications;
- (e) The amount of actual time needed to present the course;  
and
- (f) The objectives of the course.

(5) Content changes made to the course shall require resub-  
mission to the office.

(6) Course approval shall be valid for two (2) years from the  
date approved by the office.

(7) The office shall issue a course number for each approved course. The course number and the provider's number shall appear on all advertisements for the course.

(8) Providers shall submit to the office dates and locations of courses ninety (90) days in advance, and the office shall be notified at least thirty (30) days prior of changes made to scheduled courses.

(9) Providers shall provide at least one (1) course in each of the congressional districts within each quarter of the year.

~~(10) Courses in each of the congressional districts;~~

~~(10) Courses shall be offered at a minimum of one (1) time within each quarter of the year;~~

~~(11) Cancellations.~~

(a) Except for a cancellation due to an emergency, a notification of cancellation~~(Notification of cancellations)~~ shall be made no less than five (5) working days prior to the scheduled class;

(b) If the class is canceled~~(in the event of cancellation)~~, providers shall, at the option of the registrant, issue a full refund or reschedule the course;

(c) A registrant who notifies a provider of cancellation prior to ~~(within)~~ five (5) working days of a scheduled course shall be allowed the choice of a full refund or to attend a subsequent course, and

(d) Providers shall not ~~(be permitted to)~~ cancel a course with ten (10) or more registrants.

Section 3. Continuing Education Course Content. (1) All courses shall contain information beneficial in the day-to-day operation of a plumbing business.

(2) Courses relating to business shall include one or more of the following:

- (a) Business law;
- (b) Accounting practices; or
- (c) Insurance.

(3) Courses relating to job safety shall directly relate to the construction trade.

(4) Courses related to the Kentucky state plumbing code shall include one or more of the following:

- (a) KRS Chapter 318,
- (b) Basic plumbing principles;
- (c) 815 KAR 20:001 through 815 KAR 20:195;
- (d) Kentucky Building Code; or
- (e) Kentucky Residential Code.

(5) Providers requesting approval of courses for topics not listed in this section shall demonstrate the relevancy of the topic to the plumbing trade.

Section 4. Continuing Education Course Records. (1) Each registered course provider shall establish and maintain the following records for each course for three (3) years following the date of the course:

(a) Certificates of completion as provided in subsection (2) of this section;

(b) An attendance sign-in and sign-out ~~(sign-in/sign-out)~~ sheet; and

(c) A course syllabus.

(2) Certificates of completion.

(a) Each registered course provider shall complete a certificate of completion for each participant enrolled and completing an approved continuing education course.

(b) Certificates of completion shall contain ~~(relevant participant information and shall)~~ at a minimum include the following information about the participant:

- 1. Name;
  - 2. Address;
  - 3. License number;
  - 4. Date of attendance; and
  - 5. Courses completed.
- (c) One (1) copy of each certificate of completion shall be:
- 1. Sent to the office electronically;
  - 2. Retained on file by the provider; and
  - 3. Given to the participant upon completion of the course.

Section 5. Course Audits. (1) Records of the provider shall be

provided to the office within ten (10) days upon written request.

(2) Representatives of the office may, at any time, attend a course to ensure that the course is meeting its stated objectives and that applicable requirements are being followed.

Section 6. Disciplinary Action. The office may deny, suspend or revoke approval of any course provider or may issue a fine to any course provider who:

(1) Obtains or attempts to obtain registration or course approval through fraud, false statements, or misrepresentation;

(2) Does not provide complete and accurate information in either the initial registration or in any notification of changes to ~~the~~~~(such)~~ information;

(3) Advertises a course as being approved by the office before ~~the~~~~(such)~~ approval is received; or

(4) Fails to comply with the requirements of this administrative regulation.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PLB-3, "Application for Approval as a Continuing Education Course Provider for Plumbing Licensure", October, 2007; and

(b) Form PLB-4, "Application for Continuing Education Course for Plumbing Licensure", October, 2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, Division of Plumbing, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

FLOYD VAN COOK, Executive Director

TIMOTHY J. LEDONNE, Commissioner

LLOYD R. CRESS, Deputy Secretary

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CONTACT PERSON: David Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

#### ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department of Public Protection

Office of Housing, Buildings and Construction

Division of Plumbing

(As Amended at ARRS, December 10, 2007)

#### 815 KAR 20:090. Soil, waste, and vent systems.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the office, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky for soil, waste, and vent systems. This administrative regulation identifies and publishes the manufacturer's specification number of the material accepted in the installation and design of soil, waste and vent systems in each type of plumbing system. [EO-2003-064 filed December 23, 2003 created the Environmental and Public Protection Cabinet.]

Section 1. Grades and Supports of Horizontal Piping. (1) Horizontal piping shall run in practical alignment and at a uniform grade of not less than one-eighth (1/8) inch per foot, and shall be supported or anchored in accordance with the manufacturer's recommendations but shall not exceed ten (10) feet in length.

(2) A stack shall be supported at its base and each pipe shall be rigidly secured.

(3) No-hub pipe and fittings shall be supported at each joint of pipe and fittings.

(4) Polyvinyl chloride and acrylonitrilebutadiene-styrene

schedule forty (40) horizontal piping shall be supported at:

- (a) Intervals not to exceed four (4) feet;
  - (b) At the base of each vertical stack; and
  - (c) At each trap branch as close to the trap as possible.
- (5) Polyethylene pipe and fittings shall be continuously supported with a V channel.
- (6) A stack shall be rigidly supported at its base and at the floor level.

**Section 2. Change in Direction.** (1) Except as provided in subsections (2), (3), or (4) of this section, a change in direction shall be made by the appropriate use of a forty-five (45) degree wye, half-wye (1/2), quarter (1/4), sixth (1/6), eighth (1/8) or sixteenth (1/16) bend.

(2) A single sanitary tee may be used in a vertical stack.

(3) A sanitary tee may be turned on its back or side at an angle of not more than forty-five (45) degrees.

(4) A double sanitary tee may be used on a vertical soil, waste and vent line.

**Section 3. Prohibited Fittings.** The following shall be prohibited:

- (1) A double hub bend and double hub tee or inverted hub [shall not be used] on a sewer, soil or waste line;
- (2) The drilling and tapping of a house sewer or house drain, soil, waste or vent pipe;
- (3) The use of a saddle hub; and
- (4) Pipe installed with a hub or restriction that reduces the area or capacity of the pipe.

**Section 4. Dead Ends.** In the installation of a drainage system, a dead end shall not be used.

**Section 5. Protection of Material.** (1) A pipe passing under or through a wall shall be protected from breakage.

(2) A pipe passing through or under cinder, concrete, or other corrosive material shall be protected against external corrosion.

**Section 6. Materials.** (1) Main or branch soil, waste and vent pipes and fittings within or underneath a building shall be:

- (a) Hub and spigot extra heavy or service weight cast iron;
  - (b) No-hub service weight cast iron;
  - (c) Aluminum;
  - (d) Galvanized steel;
  - (e) Galvanized wrought iron;
  - (f) Lead;
  - (g) Brass;
  - (h) Types K, L, M, and DWV copper;
  - (i) Standard high-frequency welded tubing produced and labeled as ASTM B-586-73;
  - (j) Types R-K, R-L, R-DWV brass tubing;
  - (k) DWV brass tubing produced and labeled as ASTM B-587-73;
  - (l) Seamless stainless steel tubing;
  - (m) Grade G or H produced and labeled as ASTM A-312;
  - (n) Polyvinyl chloride schedule 40 or 80 produced and labeled as ASTM D-2665-76, D-1784-75 and F-891;
  - (o) Coextruded composite PVC pipe produced and labeled ASTM F-1488;
  - (p) Acrylonitrile-butadiene-styrene schedule 40 or 80 produced and labeled as ASTM D-2661-90, D-1788-73 or F-628; or
  - (q) Silicon iron or borosilicate.
- (2) A main or branch soil waste and vent pipe and fittings underground shall either be:
- (a) Hub and spigot extra heavy or service weight cast iron;
  - (b) No-hub service weight cast iron;
  - (c) Aluminum;
  - (d) Type K or L copper pipe;
  - (e) Type R-K, R-L brass tubing;
  - (f) Lead; or
  - (g) Silicon iron or borosilicate pipe and fittings or plastics DWV identified in this section.

(3) Underground waste pipe installed beneath a concrete slab shall not be less than two (2) inches in diameter and shall extend no less than twelve (12) inches above the concrete slab.

**Section 7. Size of Soil and Waste Pipe per Fixture Unit on One Stack.** (1) The following table, based on the rate of discharge from a lavatory as a unit, shall be employed to determine fixture equivalents:

Pipe Size (Inches)	Maximum Developed Length	Fixture Units
1 1/4	25 ft.	1
1 1/2	60 ft.	2
2	80 ft.	6
2 1/2	100 ft.	12
3	225 ft.	36
4	unlimited	172
5	unlimited	342
6	unlimited	576
8	unlimited	1600
10	unlimited	2900
12	unlimited	4600

(2) A water closet shall be on a minimum of a three (3) inch waste with a maximum of three (3) water closets or soil discharging fixtures per three (3) inch line.

**Section 8. Soil, and Vent Stacks.** (1) A building in which a plumbing fixture is installed shall have a soil or waste and vent stack, or stacks, extending full size through the roof.

(2) A soil or waste and vent stack shall be as direct as possible and free from sharp bends or turns.

(3) The required size of the soil or waste and vent stack shall be determined from the total fixture units connected to the stack in accordance with Section 7 of this administrative regulation except that more than three (3) water closets shall not discharge into a three (3) inch stack.

**Section 9. Future Openings.** An existing opening or an opening installed in a plumbing system for future use shall be complete with its soil, waste and vent piping and shall comply with this administrative regulation.

**Section 10. House Drain.** (1) The size of the house drain shall be determined by the total number of fixture units connecting to the house drain. The total area of vents through the roof shall be equal to that of the house drain with a minimum of one (1) three (3) inch stack.

(2) If a three (3) inch house drain enters a building, it shall be attached to a three (3) inch stack. One (1) floor drain may be added to the house drain with a three (3) inch trap if it conforms with the requirements of Section 24 of this administrative regulation, without counting toward the fixture units of the system.

**Section 11. Soil and Waste Stacks, Fixture Connections.**

(1) A soil and waste stack or branch shall have correctly faced inlets for fixture connections.

(2) Each fixture shall be independently connected to the soil or waste system

(3) A fixture connection to a water closet, floor-outlet pedestal sink, pedestal urinal, or other similar plumbing fixture shall be:

- (a) Cast iron;
- (b) Lead;
- (c) Brass;
- (d) Copper; or
- (e) Plastic closet bend.

(4) A three (3) inch closet bend shall have a four (4) inch by three (3) inch flange.

**Section 12. Changing Soil and Vent Pipes in an Existing Building.** In an existing building if the soil, waste and vent piping is not extended undiminished through the roof or if there is sheet metal soil or waste piping and the fixtures are to be changed or replaced, the piping shall be replaced with appropriate sizes and materials as prescribed for new work.

**Section 13. Prohibited Connections.** (1) A fixture connection shall not be made to a lead bend or a branch of a water closet or a similar fixture.

(2) A vent pipe above the highest installed fixture on a branch or main shall not be used as a soil or waste pipe.

**Section 14. Soil, Waste and Vent Pipe Protected.** (1) Soil, waste, or vent pipe shall not be installed or permitted outside a building unless adequate provision shall be made to protect it from frost.

(2) The piping shall be wrapped with one (1) layer of heavy hair felt and at least two (2) layers of two (2) ply tar paper, properly bound with copper wire, or the vent shall be increased to full size, the size of the increaser required as if it were passing through the roof.

**Section 15. Roof Extensions.** (1) A roof extension of soil and waste stacks shall run full size at least one (1) foot above the roof.

(2) If the roof is used for purposes other than weather protection, the extension shall not be less than five (5) feet above the roof.

(3) A stack of less than three (3) inches in diameter shall be increased to a minimum of three (3) inches in diameter before passing through a roof.

(4) If a change in diameter is made, the fitting shall be placed at least one (1) foot below the roof.

**Section 16. Terminals.** If a roof terminus of a stack or vent is within ten (10) feet of the top, bottom, face or side edge of a door, window, scuttle, or air shaft, and not screened from the opening by a projecting roof or building wall, it shall extend at least two (2) feet above the top edge of the window or opening.

**Section 17. Terminals Adjoining High Buildings.** (1) Soil, waste or vent pipe extension of a new or existing building shall not run or shall not be placed on an outside wall, but shall be installed inside the building unless the piping is protected from freezing.

(2) If the new building is built higher than the existing building, the owner of the new building shall not locate a window within ten (10) feet of an existing vent stack on the lower building.

**Section 18. Protected Traps and Vents.** (1) A fixture trap shall be protected against siphonage and backpressure.

(2) Air circulation shall be assured by means of an individual vent.

(3) A crown vent shall not be permitted.

**Section 19. Distance of Trap from Vent.** (1) The distance between the vent and the fixture trap shall be measured along the center line of the waste or soil pipe from the vertical inlet of the trap to the vent opening. The fixture trap vent, except for a water closet or a similar fixture, shall not be below the dip of the trap, and each ninety (90) degree turn in the waste line of the main waste, soil, or vent pipe shall be washed. A fixture trap shall have a vent located with a developed length not greater than that set forth in the table below:

Size of Fixture Drain (In Inches)	Distance Trap to Vent
1 1/4	2 ft. 6 in.
1 1/2	3 ft. 6 in.
2	5 ft.
3	6 ft.
4	10 ft.

(2) A fixture branch on a water closet shall not be more than four (4) feet six (6) inches.

**Section 20. Main Vents to Connect at Base.** (1) All main vents or vent stacks shall connect full size at the base of the main soil or waste pipe at or below the lowest fixture branch and shall extend undiminished in size through the roof or shall be reconnected with the main soil or vent stack at least six (6) inches above the rim of the highest fixture.

(2)(a) Except as provided in paragraph (b) of this subsection, if it becomes necessary to increase the size of a vertical vent stack, the entire stack shall be increased from its base.

(b) If the height of a stack which does not serve as the main

vent is less than forty-five (45) feet, it shall not be required to be increased from its base.

**Section 21. Vents; Required Sizes.** (1) The required size of a vent or vent stack shall be determined by the total number of fixture units it serves and the developed length of the vent, interpolating, if necessary, between permissible length of vent given in the following table:

MAXIMUM PERMISSIBLE LENGTHS OF VENTS		
Pipe Size (In Inches)	Maximum Length (In Feet)	Fixture Units
1 1/4	30	2
1 1/2	150	10
2	200	24
2 1/2	250	36
3	300	72
4	400	240
5	800	720

(2) Except for a residential installation, if a fixture opening is installed more than twenty-five (25) feet of developed length from the point where it is connected to the main soil or waste system, or, if more than ten (10) feet of vertical piping is used, the vent shall be continued full size through the roof or returned full size to the main vent.

**Section 22. Branch and Individual Vents.** A branch or individual vent shall not be less than one and one-fourth (1 1/4) inches in diameter and shall not exceed the maximum length permitted for a main vent.

**Section 23. Vent Pipes Grades and Connections.** (1) A vent or branch vent pipe shall be free from drops or sags and be so graded and connected as to drip back to the soil or waste pipe by gravity.

(2) If a vent pipe connects to a horizontal soil or waste pipe, the vent branch shall be taken off above the center line of the pipe, and the vent pipe shall rise vertically at an angle of forty-five (45) degrees to the vertical, to a point six (6) inches above the fixture it is venting before offsetting horizontally or connecting to the branch, main, waste, soil or vent.

**Section 24. Vents Not Required; Backwater Traps, Subsoil Catch Basin and Basement Floor Drains.** (1) A vent shall not be required on a backwater trap, subsoil catch basin trap or a basement floor drain if the basement floor drain branches into the house drain so that measuring along the flow line from the center of the stack, the floor drain shall not be closer than five (5) feet of the stack, nor farther than twenty (20) feet.

(2) A basement floor drain shall not require an individual vent if it branches into the house drain so that measuring along the flow line from the center of the house drain the basement floor drain shall not be farther than ten (10) feet from the house drain.

**Section 25. When Common Vent Permissible.** If two (2) water closets, two (2) lavatories or two (2) fixtures of identical purpose are located on opposite sides of a wall or partition, or directly adjacent to each other within the prescribed distance as set forth in Section 19 of this administrative regulation measured along the center line of the flow of water, the fixtures may have a common soil or waste pipe and a common vent. It shall be vented in accordance with this administrative regulation.

**Section 26. Floor Drain Individual Vent Not Required.** (1) A manufacturer's floor drain shall not require an individual vent if placed on a waste line for a floor drain within the prescribed distance of ten (10) feet from the main waste line, or stack, if the base of the stack is washed and the stack or stacks are undiminished through the roof, or connected to a main vent stack.

(2) An open receptacle may be connected to a floor drain line without being vented if the waste line discharges into a four (4) inch master trap before entering the sanitary sewer system.

**Section 27. Floor Drain.** A floor drain or service sink installed



on the operational floor level of a sewage and water treatment plant facility which discharges into an open sump and is not connected directly to the sanitary sewage system shall not be required to be trapped or vented.

**Section 28. House Drain Material.** A house drain shall be:

- (1) Extra heavy cast iron;
- (2) Service weight cast iron;
- (3) Brass;
- (4) Type (K) or (L) copper;
- (5) Lead;
- (6) ABS or PVC plastic; or
- (7) Duralin.

**Section 29. Indirect Waste Connections.** (1) Waste pipe from a refrigerator drain or other receptacle where food is stored or waste water from a water cooled compressor shall connect indirectly with the house drain, soil or waste pipe.

(2) The drain shall be vented to the outside air.

(3) The waste pipe shall discharge into an open sink or another approved open receptacle that is properly supplied with water in accordance with this administrative regulation.

(4) The connection shall not be located in an inaccessible or unventilated area.

**Section 30. Bar and Soda Fountain Wastes.** (1) A bar and soda fountain waste, sink or receptacle shall have a one and one-half (1 1/2) inch P trap and branches. The main shall not be less than two (2) inches. The fresh air pipe shall not be less than one and one-half (1 1/2) inches. The main waste line shall discharge into a properly vented and trapped open receptacle inside or outside a building.

(2) A floor receptor or floor sink may be installed flush with the finished floor if it has a full grate with an attached funnel to receive indirect waste.

(3) A floor receptor or floor sink installed specifically for the indirect wastes from a tilting braising pan, tilting kettle, or other similar equipment may be installed level with or slightly recessed in the floor if the receptor is equipped with a proper strainer and receives no other indirect waste.

**Section 31. Open Receptacles.** Soil or waste piping receiving the discharge from an open receptacle shall be at least six (6) inches above the surface of the ground if it discharges into a septic system.

**Section 32. Refrigerator Wastes.** A refrigerator waste pipe shall not be less than one and one-half (1 1/2) inches for one (1) to three (3) openings, and at least two (2) inches for four (4) to eight (8) openings. Each opening shall be trapped. The waste piping shall be equipped with sufficient cleanouts to allow for thorough cleaning.

**Section 33. Overflow Pipes.** Waste from a water supply tank or exhaust from a water lift shall not be directly connected to a house drain, soil, or waste pipe. The waste pipe shall discharge upon a roof or into a trapped open receptacle.

**Section 34. Acid and Chemical Wastes.** A corrosive liquid shall not be permitted to discharge into the soil, waste or sewer system unless otherwise permitted by this administrative regulation. The waste shall be thoroughly diluted or neutralized by passing through a properly constructed and acceptable dilution or neutralizing pit before entering the house sewer.

**Section 35. Laboratory Waste Piping.** (1) Laboratory waste piping shall be sized in accordance with this administrative regulation and each fixture shall be individually trapped.

(2) A continuous waste and vent pipe system may be used, if the waste discharges into a vented dilution pit outside the building with a vent equal to the size of the drain. The vent may be eliminated if the pit has a ventilated cover.

(3) If a dilution pit is not required and is not used, the fixtures shall be individually vented.

(4) If construction conditions permit, the base of the stack of the continuous waste and vent system shall be washed by the last fixture opening, and continue full size independently through the

roof.

(5) A fixture branch exceeding more than the distance specified in the table in Section 19 of this administrative regulation from the main shall be revented and the distance shall be measured from the center of the main to the center of the vertical riser.

(6) A fixture connection shall rise vertically to a height so that the trap shall not be lower than twelve (12) inches from the bottom of the sink. [and] Two (2) or more sinks may be connected into a common waste before entering the riser of the continuous waste and vent system, if the fixtures are not more than five (5) feet from the center of one (1) fixture to the center of the other.

**Section 36. Acid Waste Piping.** (1) Underground piping for acid wastes shall be:

(a) Extra heavy salt glazed vitrified pipe;

(b) Silicon iron;

(c) Lead;

(d) Polyethylene pipe and fittings produced and labeled as ASTM D-1204-62T;

(e) Polypropylene pipe produced and labeled as ASTM D-4101-85;

(f) Polypropylene pipe and fittings produced and labeled as ASTM F-1412; or

(g) Other materials approved in 815 KAR 20.020, Section 5.

(2) Piping for acid wastes and vents above ground shall be:

(a) Silicon iron;

(b) Lead;

(c) Borosilicate;

(d) Polyethylene pipe produced and labeled as ASTM D-1204-62T;

(e) Polypropylene pipe produced and labeled as ASTM D-4101-85; or

(f) Filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (green or poly thread).

**Section 37. Special Vents.** A flat vent may be allowed if the design of the building prohibits the type of venting required by this administrative regulation.

**Section 38. Basement Floor Drains and Sanitary Sewage Systems.** (1) Except for a basement floor drain exempted under subsection (2) of this section, a basement floor drain shall be connected to the house sewer and properly trapped and vented as set forth in this administrative regulation.

(2) A basement floor drain in a single family dwelling shall not be connected to the house sewer and shall be exempt from this section if, prior to the installation, the local health department or sanitary sewage system board, plant, district, or treatment plant owner notifies the Division of Plumbing, in writing, that connection is detrimental to the functioning of the sanitary sewer system or subsurface system. If the drain is not to be connected to the house sewer, the installation shall also be exempt from the waste, trap and venting provisions of the State Plumbing Code.

FLOYD VAN COOK, Executive Director

TIMOTHY J. LEDONNE, Commissioner

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

CONTACT PERSON: David Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

#### CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Fraud, Waste and Abuse,

Identification and Prevention

(As Amended at ARRS, December 10, 2007)

906 KAR 1:160. Monitoring system for products containing ephedrine, pseudoephedrine, or phenylpropanolamine.

RELATES TO: KRS 15.380, 218A.1446, 218A.240 [15-380-

15-404, 218A.240]

STATUTORY AUTHORITY: KRS 194A.050(1), 218A.1446(3)  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 218A.1446 authorizes the Cabinet for Health and Family Services and the Office of Drug Control Policy to establish an electronic recordkeeping mechanism for monitoring the sale of any nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers. KRS 218A.1446(3) states that [allows pharmacies to request an exemption from electronic reporting] pursuant to administrative regulations promulgated by the Drug Enforcement and Professional Practices [Standards] Branch and the Office of Drug Control Policy (ODCP), pharmacies requesting an exemption to electronic reporting may file an exemption request to the Branch and ODCP. This administrative regulation establishes the Kentucky Electronic Methamphetamine Precursor Tracking (KEMPT) system, and establishes the requirements for an exemption from electronic reporting [if a pharmacy shows an imposition of additional cost and maintains a written log or record described in KRS 218A.1446(2)(b)].

Section 1. Definitions. (1) "Attempted purchase" means information regarding a transaction is entered into the KEMPT system by a dispenser of a precursor to methamphetamine and the sale is not completed because the system recommends that the transaction be denied pursuant to KRS 218A.1446(5) or (6).

(2) "Branch" means the Drug Enforcement and Professional Practices [Standards] [Practices] Branch within the Division of Fraud, Waste and Abuse, Identification and Prevention, Office of the Inspector General, Cabinet for Health and Family Services.

(3) "Cabinet" is defined by KRS 218A.010(3).

(4) (2) "Cabinet" means the Cabinet for Health and Family Services or its designated agent.

(3) "Dispenser of a precursor to methamphetamine" means a registered pharmacist, pharmacy intern, or pharmacy technician who lawfully dispenses a nonprescription compound, mixture, or preparation containing a detectable quantity of ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

(5) (4) "Kentucky Electronic Methamphetamine Precursor Tracking" or "KEMPT" means the [an] electronic recordkeeping mechanism contracted for [approved] by the Office of Drug Control Policy to monitor the sale of a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

(6) (5) "Law enforcement officer" means a:

(a) Drug enforcement agent designated by the Cabinet for Health and Family Services pursuant to KRS 218A.240(2);

(b) Kentucky peace officer certified pursuant to KRS 15.380 [to 15.404] as a:

1. Kentucky State Police officer;
2. City, county, or [and] urban-county police officer;
3. Deputy sheriff; or
4. State or public university safety and security officer,
- (c) Certified or full-time peace officer of another state; or
- (d) Federal peace officer[;]

1. Whose duty is to enforce the laws of this state, another state, or of the United States relating to drugs; and

2. Who is engaged in a bona fide specific investigation].

(7) (6) "ODCP" means the Office of Drug Control Policy within the Kentucky Justice and Public Safety Cabinet.

(8) "Precursor to methamphetamine" means a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

(9) (7) "Purchaser" means an individual age eighteen (18) or older who purchases, or attempts to purchase, a nonprescription

compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

Section 2. Electronic Reporting. (1) Unless granted an exemption pursuant to Section 3(5) of this administrative regulation or using an alternative electronic reporting mechanism approved pursuant to KRS 218A.1446(2)(b), the following information shall be entered in the KEMPT system upon the purchase, or attempted purchase, of a precursor to methamphetamine [nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers]. [A dispenser shall maintain a record of each purchase, or attempted purchase, of a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.]

(2) Using a computer with a high-speed internet connection and software provided by the cabinet, a dispenser shall transmit the following information electronically at the point of sale of a nonprescription product described in subsection (1) of this section:

(a) Date of transaction pursuant to KRS 218A.1146(2)(b), which is entered manually or recorded automatically by KEMPT;

(b) Identifying information regarding the purchaser pursuant to KRS 218A.1146(2)(b); and

(c) Amount and name of the product dispensed pursuant to KRS 218A.1446(2)(b).

(2) The cabinet shall be solely responsible for the security of the transaction information required by subsection (1) of this section after a dispenser of a precursor to methamphetamine transmits the information [; and

(b) Transaction number;]

(3) The cabinet shall provide a toll-free telephone number;

(a) For technical support available to a dispenser of a precursor to methamphetamine twenty-four (24) hours per day, seven (7) days per week; and

(b) For customer service available to a purchaser who has an inquiry regarding a transaction, Monday through Friday, 8 a.m. to 4:30 p.m., except for state recognized holidays.

(4) A pharmacy that uses the KEMPT system shall be exempt from maintaining a written log of the information required by KRS 218A.1446(2)(b) [information described in subsection (2) of this section].

(5) A pharmacy that is not able to secure an electronic signature shall maintain a hardcopy signature logbook consisting of each purchaser's signature and transaction number.

Section 3. Extension for Reporting Information [Beyond the Point of Sale] and Exemption from Electronic Reporting. (1) If a dispenser of a precursor to methamphetamine experiences mechanical or electronic failure, the cabinet shall [may] grant an extension for reporting the information required by Section 2(1)(2) of this administrative regulation.

(2) To request an extension [beyond the point of sale] for reporting information required by Section 2(1)(2) of this administrative regulation, a dispenser of a precursor to methamphetamine shall submit a [written] request to the cabinet that:

(a) States the reason for the request;

(b) Identifies the period of time for which the extension is necessary, not to exceed seventy-two (72) hours; and

(c) Is submitted.

1. Within twenty-four (24) hours of discovery of the circumstances resulting in the need for an extension request; or

2. On the day following a holiday or weekend if the discovery occurs on a day that cabinet offices are closed

(3) If a transaction occurs during the time period in which a request described in subsection (2) of this section is pending, a dispenser of a precursor to methamphetamine shall

(a) Maintain a written log or an alternative electronic recordkeeping mechanism approved pursuant to KRS 218A.1446(2)(b) of the information required by Section 2(1)(2) of this administrative regulation; and

(b) Enter the information in the KEMPT system within seventy-

two (72) hours of the system becoming operational.

(4) The cabinet shall acknowledge receipt of a request described in subsection (2) of this section within:

(a) Twenty-four (24) hours or receipt; or

(b) On the day following a holiday or weekend if cabinet offices are closed [If an electronic report transmitted by a dispenser fails to reach the cabinet:

1. The cabinet shall grant an automatic extension to the dispenser; and

2. The dispenser shall record the information required by Section 2(2) of this administrative regulation in a hardcopy signature logbook].

(5) [Pursuant to KRS 218A.1446(3)(c),] An exemption from the electronic reporting requirement described in Section 2 of this administrative regulation shall [may] be granted upon receipt by the branch and ODCP of a pharmacy's [dispenser's] written request for exemption if the request complies with KRS 218A.1446(3)(c):

(a) Shows that additional costs to the pharmacy would be incurred; and

(b) Provides that a written log of information subject to inspection by the branch and described in Section 2(2) of this administrative regulation will be maintained].

Section 4. Request for KEMPT Reports. (1) The cabinet shall provide a KEMPT report:

(a) To a law enforcement officer whose duty is to enforce the laws of this state, another state, or of the United States relating to drugs [during the course of a criminal investigation];

(b) To a [reporting] pharmacy;

(c) Pursuant to a subpoena issued by a grand jury; or

(d) Pursuant to a court order issued by a criminal court.

(2) The cabinet shall not provide [be prohibited from providing] a KEMPT report to a person or entity that is not authorized in accordance with subsection (1) of this section to receive the report.

(3) A law enforcement officer or [reporting] pharmacy may submit an electronic request for a KEMPT report at the following website: <http://chfs.ky.gov/kempt>.

(4) A KEMPT report provided to a pharmacy shall not identify the dispenser of a precursor to methamphetamine or the dispensing pharmacy.

Section 5. Denial of Transactions and Overrides. (1) If an individual attempts to purchase a precursor to methamphetamine in violation of the nine (9) gram restriction established by KRS 218A.1446(5) or age restriction established by KRS 218A.1446(6), the KEMPT system shall:

(a) Notify the pharmacy at the time of sale; and

(b) Recommend that the pharmacy deny the transaction.

(2) The KEMPT system shall provide an [a safety] override feature for use by a dispenser of a precursor of methamphetamine to allow completion of the sale [if the dispenser feels threatened by a purchaser who violates the nine (9) gram restriction].

Section 6. Effective Date. Unless granted an exemption pursuant to Section 3(5) of this administrative regulation or using an alternative electronic reporting mechanism approved pursuant to KRS 218A.1446(2)(b), all pharmacies that dispense precursors to methamphetamine shall:

(1) Comply with the electronic reporting requirements of Section 2 of this administrative regulation within (30) days of the date that a pharmacy has access to KEMPT following the effective date of this administrative regulation [on the earliest date, following adoption of this administrative regulation, that a pharmacy has access to KEMPT]; or

(2)(a) Submit a request to the branch and ODCP for an extension if the pharmacy is not able to comply with the electronic reporting requirements on the date the pharmacy has access to KEMPT; and

(b) Agree to comply with the electronic reporting requirements by June 1, 2008, [Refusal of Sale. If a dispenser refuses to sell a product in accordance with the nine (9) gram restriction established in KRS 218A.1446(5), the dispenser shall document in writing or enter the refusal on the KEMPT system as an attempted purchase.]

STEVEN D. DAVIS, Inspector General

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 14, 2007

FILED WITH LRC: November 15, 2007 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(Amended After Comments)

501 KAR 13:010. Life safety issues.

RELATES TO: KRS 198B.650-198B.689, 217.280-217.390,  
441.055, 441.560

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055,  
441.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum health and life safety standards for jails which do not elect to house state prisoners. This administrative regulation sets forth procedures to provide protection for basic health and life safety in jails that do not house state prisoners.

Section 1. Definitions. (1) "Life Safety Jail" means county jails and correctional or detention facilities, including correctional facilities defined in KRS 441.005, operated by and under the supervision of any county, regional jail authority, city or urban county government that does not house state prisoners as defined by KRS 532.100.

(2) "Medical authority" means the person or persons licensed and certified to provide medical care to prisoners in the jail's custody.

Section 2. Staffing. (1) Each jail shall provide a minimum of two (2) staff members, communication staff excluded, per twenty-four (24) hour awake supervision for all prisoners. If requested by the jailer or fiscal court, the Department of Corrections may conduct a staffing analysis.

(2) Each jail shall be required to provide the Department of Corrections with a weekly population update.

(3) If a female prisoner is lodged in the jail, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision.

(4) Qualifications. Security employees shall be at least twenty-one (21) years of age.

(5) Compensation. Each employee shall receive a wage at least equal to the State Minimum Wage Law except if Federal Minimum Wage Law applies.

(6) Males and females shall be housed separately.

Section 3. Physical Plant. (1) Square footage living space requirement for jails shall be the same as required in 501 KAR 3:050.

(2) All furnishings in the jail shall be noncombustible and non-toxic as approved by the Department of Corrections.

(3) Kitchen. The purpose of this area shall be to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:

(a) Compliance with standards of the State Food Service Code, 902 KAR 45:005;[-]

(b) Commercial type stoves and refrigeration units; and[-]

(c) Walls, floors, and decks shall be approved fire rated masonry, concrete, or steel construction.

(4) Gauges, indicators, and alarms shall be located in an area monitored by staff.

(5) The jail shall provide ventilation to meet air exchange as required in the state health codes, KRS 198B.650 to 198B.689, 803 KAR 2:317, and 902 KAR 45:005.

(6) Electrical outlets if provided shall be ground-faulted or have ground-fault circuit breakers.

(7) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which shall be secure.

(8) The jail shall have a procedure for immediate reporting and repairing any broken or malfunctioning key or lock.

(9) A set of duplicate keys shall be maintained in a separate,

secure place.

(10) Each jail shall comply with the Kentucky Building Code, 815 KAR 7:120.

Section 4. Fire Safety. (1) Each jail shall have a written policy and procedure which specifies fire prevention regulations and practices to ensure the safety of prisoners, visitors, and staff. These shall include but not be limited to:

(a) Provision for fire emergency planning sessions for staff at least quarterly;[-]

(b) Written documentation of fire planning sessions and a written copy of the material taught;[-]

(c) A fire safety inspection by the Department of Corrections at least once a year;[-]

(d) Inspection and testing of fire protection equipment by qualified persons at least annually with visual inspections by staff monthly;[-]

(e) Smoking restrictions and regulations; and[-]

(f) Written evacuation plan coordinated with local fire officials.

(2) Each jail shall have exits distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.

(3) Each jail shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.

(4) In all areas where a prisoner may be confined, each jail shall be provided with an emergency smoke evacuation system activated by smoke detectors and operated by emergency power.

(5) Each jail shall have an approved fire alarm and smoke detection system.

Section 5. Sanitation; Hygiene. (1) The jailer shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jail shall have fresh air circulating within prisoner living and activity areas.

(4) All prisoners shall be provided with hot and cold running water in showers and lavatories.

Section 6. Medical Services. (1) Deputy jailers and correctional officers shall have current training in standard first aid and C.P.R., as offered by the American Red Cross, the American Heart Association, or an equivalent nationally recognized organization ~~and the Department of Corrections, Division of Corrections Training~~.

(2) The jail shall have first aid kits available at all times.

(3) A health status (including current medications, known allergies, and diet or other special medical needs) shall be completed on each prisoner during admission.

(4) Each prisoner shall be afforded access to necessary medical care as in KRS 441.045.

Section 7. Medical Transfers pursuant to KRS 441.560 (1) A jailer may request that a prisoner be transferred to the department for necessary medical treatment and care if the prisoner:

(a) Is injured;

(b) Is pregnant;

(c) Becomes sick or ill;

(d) 1. Is severely and persistently mentally ill; and

2. Is presenting an imminent risk of harm to self or others; or

(e) Requires specialized medical care or long-term medical care which is not available at the local jail.

(2) The transfer request shall be submitted to the commissioner in writing and shall contain the following information:

(a) Prisoner's name;

(b) Prisoner's social security number;

(c) County where currently housed;

(d) Inmate number;

(e) Pending charge or conviction and if felony or misdemeanor;

- (f) Estimated sentence or time to serve;
- (g) Whether the prisoner has insurance or not;
- (h) Whether the prisoner is indigent or not;
- (i) Justification for medical transfer;
- (k) Whether the care is necessary or not;
- (l) Any conflict reports; and
- (m) Relevant attachments such as:
  - 1. Copy of prisoner's insurance card;
  - 2. Doctor's report;
  - 3. Incident report;
  - 4. Citation;
  - 5. Booking information;
  - 6. Preexisting medical records; or
  - 7. Current medication.
- (3) If a prisoner is approved for transfer to the department as a catastrophic medical prisoner, the jail shall provide the following, unless already provided with the transfer request:
  - (a) All medical information;
  - (b) Current medication in proper container;
  - (c) Booking information;
  - (d) Incident reports;
  - (e) Current citation;
  - (f) Classification information;
  - (g) Conflict reports;
  - (h) Any additional pertinent information; and
  - (i) Custody receipt.
- (4) If a prisoner is approved for transfer to the department as a catastrophic medical prisoner, the prisoner shall be transported by the department.

Section 8. [7-] Food Services. (1) The jail shall comply with KRS 217.280 to 217.390, 803 KAR 2:317, and 902 KAR 45:005.

(2) The jail shall provide prisoners with a diet containing 2400 calories daily and jail menus shall be approved annually by a nutritionist or dietician.

(3) Prisoners shall receive three (3) meals per day, one (1) of which shall be hot. More than fourteen (14) hours shall not elapse between any two (2) meals.

(4) The jailer shall provide for medical diets if prescribed by a medical authority.

(5) The jailer shall provide for religious diets after review and approval of religious authority.

(6) The jailer shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary [or-reward] purposes.

(8) A staff member shall directly supervise all food prepared within the jail.

(9) All food shall be served under the direct supervision of a staff member.

(10) The jail shall have sufficient cold and dry food storage facilities.

(11) The jailer or his designee shall inspect the food service area daily.

(12) Canteen food items purchased by prisoners may be stored and prepared in amounts that do not pose a threat to the health or security of the institution.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: December 14, 2007

FILED WITH LRC: December 14, 2007 at 10 a.m.

CONTACT PERSON: Karen S. Howard, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen S. Howard (502) 564-8215

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative

regulation establishes procedures for the protection of basic health and life safety in jails that do not house state prisoners (life safety jails).

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes procedures for the protection of basic health and life safety in jails that do not house state prisoners as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes procedures for the protection of basic health and life safety in jails that do not house state prisoners.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that the first aid and C.P.R. training required for jail staff may be provided by the American Red Cross, the American Heart Association, or an equivalent nationally recognized organization.

(b) The necessity of the amendment to this administrative regulation: To increase safety of the jails, to provide for religious diets if appropriate, and to implement HB 191 regarding catastrophic medical transfers. HB 191 2007 GA authorizes local jailers to request medical transfers to the department for prisoners with significant medical needs. HB 191 further requires the department to promulgate administrative regulations establishing transfer procedures.

(c) How the amendment conforms to the content of the authorizing statutes: To clarify that additional qualified providers may offer the required first aid and C.P.R. training.

(d) How the amendment will assist in the effective administration of the statutes: It improves safety and protection of basic rights in life safety jails. It also establishes the procedures for catastrophic medical transfers to the department so that local jailers can transfer prisoners with specialized or ongoing medical needs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This affects approximately 8 life safety jails and their staff, approximately 50 Department of Corrections employees, including 16 Local Facilities staff, and approximately 197 inmates in the life safety jails, and qualified providers of first aid and C.P.R. training.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional required action. However, jails may use additional qualified providers for the required first aid and C.P.R. training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost for jails.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Jails will be able to utilize additional qualified providers for the required first aid training.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Approximately \$900,000.

(b) On a continuing basis: Approximately the same.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Set out by HB 191, Section 5 Initially general funds, and then if insufficient, up to \$1,500,000 may be requested from the general fund surplus or budget reserve trust fund account.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Funding for this program is set by statute see (6).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? No. The procedures for re-

questing medical transfers apply equally to all life safety jails.

# FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department of Corrections and life safety jails.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055, 441.560.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? Approximately \$900,000 based on estimate 80 transferred prisoners.

(d) How much will it cost to administer this program for subsequent years? Approximately same as (c)

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

## TRANSPORTATION CABINET Department of Vehicle Regulation Division of Drivers Licensing (Amended After Comments)

601 KAR 13:070. KRS 159.051, Compliance verification for a minor.

RELATES TO: KRS 159.030, 159.040, 159.051, 159.160, 186.440, 186.450, 186.470, 186.560

STATUTORY AUTHORITY: KRS 186.400(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.400(1) authorizes the Transportation Cabinet to promulgate administrative regulations for the enforcement of driver licensing laws. This administrative regulation establishes the requirements of the notification to be submitted by a minor driver licensing applicant to the Circuit Court Clerk and the notification to be sent by a school superintendent or designee to the cabinet if a minor withdraws from school or is academically deficient. This administrative regulation is necessary to enforce KRS 159.051 and 186.560(7).

Section 1. Definitions. [(4)] "Minor" means a person under the age of eighteen (18) years.

[(2)] "Participating school district" means a school district which the Department of Education has reported to the Transportation Cabinet as having an alternative education program which complies with 704 KAR 7:100-]

Section 2. Minor's Application for Driving Privilege for Kentucky [Public, Private, or Private] School Students [being schooled at Home]. (1) A minor attending a public or nonpublic school [private school or a private school student being schooled at home] [residing within the boundaries of a participating school district] who is applying from a Kentucky [an] original learner's permit, a transfer learner's permit, or a transfer operator's license shall submit to the circuit court clerk:

(a) [Proof of graduation from high school;

(b) Proof of having received his General Equivalency Diploma;

(c) A school compliance [enrollment] verification form for driver licensing, executed within the preceding sixty (60) days, which contains the following:

1. Applicant's full name;

2. The last four (4) digits of his or her Social Security or [driver's license] number;

3. Date of birth;

4. Name and address of school attended;

5 [4.] Name [and address] of the school district;

6 [5.] Signature and title of the designated school representative [official] completing the form;

7 [6.] Statement that the minor is attending and successfully participating in school as defined in KRS 159.051;

8. [For private school students being schooled at home, the signature of the Public School Director of Pupil Personnel or the District Contact for No Pass/No Drive certifying that the student is registered and in compliance with KRS 159.160;

9 [7.] Embossed seal of the school if applicable; [district, and]

9 [10.] [8.] Date of execution of the form; and [or]

10 [11.] Expiration date of the form; or

(b) Proof of graduation from high school; or

(c) Proof of having received his or her General Equivalency Diploma.

(d) A student enrolled in a home school program shall obtain the signature of the Director of Pupil Personnel for the local school district or the district contact for No Pass No Drive to verify that the student is enrolled in a home school program pursuant to KRS 159.160.

(2) The minor's application for a driver's license shall be submitted to the circuit court clerk on the Kentucky Transportation Cabinet form entitled "Driver License-ID Card Application Form TC 94-30".

(3) The statement required by subsection (1)(a) of this section shall be submitted to the circuit court clerk on the Department of Education form entitled "School Compliance Verification for driver's Licensing, KRS 159.051 (No Pass/No Drive Statue)".

(4) Upon request by the home school a school compliance verification form for driver licensing shall be mailed by the school district of residence to the home school for any student who will turn sixteen (16) or seventeen (17) during the school year. A registered home school student may pick up the verification form from the school district of residence. [to a registered private school student being schooled at home by the public school district of residence upon the school notifying the district of a student who will turn sixteen (16) or seventeen (17) during the school year. The private school student being schooled at home may pick up the school compliance verification for driver licensing in the public school district of residence.]

(5) The signature of parents or guardians of home [private] school students [being schooled at home] on the school compliance verification form for driver licensing and on the driver license ID card application form shall act as certification that the student is enrolled in a home school program [an authorized private school student being schooled at home] and is in compliance with the requirements of KRS 159.051.

Section 3. Minor's Application for Driving Privilege for Opt-of-School Students. (1) A minor attending school out-of-state who is applying for a Kentucky original learner's permit, a transfer operator's license shall submit to the circuit court clerk a school compliance verification form for the driver licensing, executed within the preceding sixty (60) days, obtained by mail or in person from the school board in the county in which the student resides or from the Department of Education, which contains the following:

[(d)] A statement from his parent or guardian that the minor is being schooled at home. The statement shall contain the following:]

(a) [1-] Applicant's full name;

(b) The last four (4) digits of his or her [2-] Social Security [or driver's license] number;

(c) Date of birth;

(d) [3-] Parent or guardian's [full name, address, and] signature verifying that the out-of-state [schooled] student is in compliance with KRS 159.051;

(e) Signature of the Public School District Director of Pupil Personnel or the District Contact for No Pass No Drive certifying that the out of state [school] student is registered and in compliance with KRS 159.160;

(f) 4. Statement executed within the preceding sixty (60) days that the minor is successfully participating in home school as defined in KRS 159.051; and

5. Date the statement was executed; and

(g) Expiration date of the form

(2) The minor's application for a driver's license shall be submitted to the circuit court clerk on the Kentucky Transportation Cabinet form entitled "Driver License-ID Card Application Form TC 94-30".

(3) The statements required by subsection (1)(e)-(d) of this section shall [may] be submitted to the circuit court clerk on the Department of Education form entitled "School Compliance Verification For Driver Licensing [School Enrollment Verification or Reinstatement], KRS 159.051 (No Pass/No Drive Statute)".

#### Section 4 [3.] Notification of Noncompliance with KRS 159.051.

(1) A participating school district superintendent or designee, a home school, or an out-of-state school shall submit a notification in electronic or written form [statement] to the Transportation Cabinet to report that a minor is not in compliance with KRS 159.051. [A private home school or out of state school shall notify the Transportation Cabinet that a minor is not in compliance and may do so by paper.] The notification [statement] shall contain the following information:

(a) Minor's full name;

(b) Last four (4) digits of minor's Social Security number or driver's license number;

(c) Name and address of the [participating] school [district];

(d) Designated school representative's superintendent's name and title;

(e) Statement that the minor is not in compliance with KRS 159.051; and

(f) [Embossed seal of the school district; and

(g) Date of execution of the statement.

(2) The [private home school or out of state school may send the] notification may be sent [by paper] [This statement shall be sent] to the Transportation Cabinet, Division of Driver Licensing, 200 Mero Street [504 High Street], Second Floor, [State Office Building], Frankfort, Kentucky 40622.

(3) This statement may be submitted on the Department of Education form entitled "Driver Licensing Suspension Form, KRS 159.061 (No Pass/No Drive Statute)".

Section 5 [4.] Reapplication After Compliance with KRS 159.051. (1) If a minor becomes eligible to reapply for driving privilege after one (1) full semester of compliance [by complying] with KRS 159.051, the school [district] shall submit [prepare] a compliance notice in electronic or written form to the Transportation Cabinet. [A private home school or out of state school may submit the notification by paper.] The compliance notice shall contain [containing] the following information:

(a) Minor's full name;

(b) Last four (4) digits of minor's Social Security number or driver's license number;

(c) Name and address of the school [district];

(d) Designated school representative's name and title [Name and address of the school];

(e) [Signature and title of the school district official executing the compliance notice;

(f) Statement that the minor is in compliance with KRS 159.051;

(g) [Embossed seal of the school district; and

(h) Date of execution.

(2) The [private home school or out of state school may send the] notification shall be sent [notice shall be sent] to the Transportation Cabinet, Division of Driver Licensing, 200 Mero Street [504 High Street], Second Floor, [State Office Building], Frankfort, Kentucky 40622.

(3) The minor may submit a copy of the notice to the circuit court clerk in his county of residence.

(4) The notice may be submitted on the Department of Education's form entitled "Driver Licensing School Enrollment Verification or Reinstatement, KRS 159.051 (No Pass/No Drive Statute)".

Section 5. Counties with Multiple School Districts. (1) In a county with multiple school districts, if at least one (1) is a participating school district, then each minor driver licensing applicant shall:

(a) Comply with Section 2 of this administrative regulation; or

(b) Provide to the circuit court clerk a notice that he resides in a district which does not have an approved alternative education program. The notice shall contain the following:

1. Full name of minor;

2. Social Security or driver's license number of the minor;

3. Name and address of the school district;

4. Statement that the school district is not a participating school district;

5. Name and title of school district official completing the statement;

6. Embossed seal of the school district; and

7. Date of completion of the statement.

(2) The statement referred to in subsection (1)(b) of this section may be submitted on the Department of Education form entitled "School Districts Not Participating, KRS 159.051 (No Pass/No Drive Statute)".

#### Section 6. Incorporation [Material Incorporated] by Reference.

(1) The following material is incorporated by reference:

(a) "School Compliance Verification for Driver Licensing, [Driver Licensing School Enrollment Verification or Reinstatement], KRS 159.051 (No Pass/No Drive Statute)" form, (December [September] 2007 [October 1996]), Department of Education; and

(b) "Driver License-ID Card Application Form TC 94-30" (August 2007), Kentucky Transportation Cabinet, ["School Districts Not Participating, KRS 159.051 (No Pass/No Drive Statute)", (March 1995), Department of Education; and

(c) "Driver Licensing Suspension Form, KRS 159.061 (No Pass/No Drive Statute)" (October 1996), Department of Education.]

(2) This material may be inspected, copied subject to applicable copyright law, or obtained at the Department of Education, Dropout Prevention Branch [Student/Family Support Services], Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DANA FUGAZZI, Staff Attorney

APPROVED BY AGENCY: September 12, 2007

FILED BY LRC: September 12, 2007 at 4 p.m.

CONTACT PERSON: Dana Fugazzi, Staff Attorney Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station: W6-21-02, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana C. Fugazzi

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes the requirements of the notification to be submitted by a minor driver licensing applicant to the Circuit Court Clerk and the notification to be sent by a school superintendent to the Transportation Cabinet if a minor withdraws from school or is academically deficient.

(b) The necessity of this administrative regulation: This regulation is necessary to enforce KRS 159.051 and 186.560(7).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the notification required to be submitted by minor driver licensing applicants and by school superintendents if a minor withdraws from school or is academically deficient.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the notification required to be submitted by minor driver licensing applicants to the Circuit Court Clerk and the notification to be sent to the Transportation Cabinet by school superintendents if



a minor withdraws from school or is academically deficient.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will make the regulation apply to all 16 and 17 year old students. It deletes the requirement that for a school district to participate it must be designated as a participating school district by having an alternative education program.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this regulation to comply with KRS 159.051 and 186.470 which were amended by House Bill 32 from the 2007 General Assembly as enacted through 2007 Ky. Acts Ch. 36, Sections 1-2.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation establishes the notification required to be submitted by minor driver licensing applicants and by school superintendents if a minor withdraws from school or is academically deficient.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides a consistent method for all 16 and 17 years old students to obtain the necessary form from the school to be taken to the Circuit Court Clerk's driver license issuing offices in order to obtain a permit or license.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect an estimated 80,000 to 85,000 16 and 17 year olds, public high schools, private schools, home schools, the Transportation Cabinet Division of Driver Licensing, the Department of Education Dropout Prevention Branch, Circuit Court Clerk's driver licensing issuing offices and Kentucky.gov.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All 16 and 17 year olds will have to obtain a School compliance verification form from their school to provide to the Circuit Court Clerk's driver license issuing office to verify that the student is in compliance with KRS 159.051. All schools will have to report electronically through Kentucky.gov those 16 or 17 year olds who become non-compliant with KRS 159.051 to the Transportation Cabinet, Division of Driver Licensing, in order to suspend the students' driving privileges.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be at the school level and includes the cost to administer the program, handle forms and process the necessary information electronically.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Schools will have a lower dropout rate and higher academic sufficiency for minor students.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Minimal computer programming costs.

(b) On a continuing basis: Minimal costs that can be absorbed through administrative duties.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Schools-General Fund, Administrative Costs-Road Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied No, all 16 and 18 year olds must meet the same requirements to be eligible for the privilege to operate a motor vehicle.

cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Transportation Cabinet Division of Driver Licensing, The Department of Education Dropout Prevention Branch, all public schools, and the Circuit Court Clerk's driver license issuing offices.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 159.051, 159.160, 186.400, 186.440.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Minimal, any costs of administering this program should be balanced by keeping 16 and 17-year old students in school.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Cannot be determined.

(c) How much will it cost to administer this program for the first year? Undetermined, it is expected to be minimal.

(d) How much will it cost to administer this program for subsequent years? Minimal

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including

## PROPOSED AMENDMENTS RECEIVED THROUGH NOON, DECEMBER 14, 2007

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY**  
**Division of Student and Administrative Services**  
**(Amendment)**

**11 KAR 5:200. Go Higher Grant Program.**

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535, 164.780, 164.785

STATUTORY AUTHORITY: KRS 164.746(6), 164.748(4), 164.7535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. This administrative regulation establishes application procedures and selection criteria for the administration of the Go Higher Grant Program.

Section 1. Definitions. (1) "Demonstrated financial need" means an expected family contribution (EFC) of no more than 150% of the federal Pell Grant EFC as set forth in 11 KAR 5:145, Section 1 ~~(documented eligibility to receive federal Pell Grant funds).~~

(2) "Eligible institution" is defined by KRS 164.740(3).

(3) "Eligible student" is defined by KRS 164.740(5).

(4) "Half-time enrollment" means enrollment in a minimum of six (6) hours of course work.

Section 2. Eligibility Criteria. In order to be eligible to receive grant funds under this program, an individual shall:

(1) Be age twenty-four (24) or older by July 1 prior to the start of the first term during which the award will be used;

(2) Be enrolled at an eligible institution;

(3) Have enrollment of less than half-time during the first semester in which the grant is awarded;

(4) ~~(Not have been previously enrolled in a postsecondary institution;~~

(5) ~~Have demonstrated financial need;~~

(6) ~~(6) Be a Kentucky resident;~~

(7) ~~(7) Be a U.S. citizen, national or permanent resident; and~~

(8) ~~(8) Not be currently incarcerated (have been convicted of a felony).~~

Section 3. Application Procedure. (1) In order for an eligible student to be considered for an award under this program, the student shall complete:

(a) The Go Higher Grant Program Application available through the Authority; and

(b) The Free Application for Federal Student Aid (FAFSA) as required by 11 KAR 4:080, Section 2.

(2) The priority deadline for applications shall be July 1. Applications shall be accepted after that date with awards made until funds are exhausted.

Section 4. Awards. (1) An eligible student recipient shall receive an award under this program for only one (1) academic year.

(2) The maximum award amount under this program shall be \$1,000 per recipient.

(3) The amount of the award under this program for the first semester of the recipient's enrollment shall be equal to:

(a) The cost of tuition at the participating institution, not to exceed the maximum award amount; and

(b) A book allowance of fifty (50) dollars per credit hour of enrollment, not to exceed the maximum award amount.

(4) The amount of the award under this program for the second semester of the recipient's enrollment, if any, shall be equal to the difference between the maximum award amount under this program and the amount received during the recipient's first semester of enrollment up to the cost of tuition and book allowance.

(5) In making awards under this program, priority shall be given to eligible applicants who have received a General Education Development (GED) Certificate.

Section 5. Disbursement Procedures. (1) Grant funds shall be disbursed by the authority to the participating institution in the form of a single check, made payable to the participating institution, or by electronic funds transfer delivered to the participating institution for subsequent delivery for application to the account of the award recipient.

(2) Within thirty (30) days following receipt of the eligibility verification file, the disbursement of grant funds by the authority to the participating institution shall be made for subsequent application to the account of the award recipient.

Section 6. Reporting and Repayment Requirements. (1) The school shall verify enrollment to the Authority after the time for adding or dropping classes at the institution has passed.

(2) If a grant recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an over-award and a full refund or repayment of the award shall be required.

(3) If the institution is unable to document the student's last date of attendance, any grant disbursement for that award period shall be subject to full refund and repayment.

(4) If, at any time, a grant recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full grant award shall be subject to cancellation, if not yet disbursed, or refund and repayment if the grant has already been disbursed.

(5) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(6) If a refund is due from the participating institution or a repayment is due from a student, the participating institution shall transmit to the authority the refund and shall report:

(a) The student's name and Social Security number;

(b) The reason for the refund or repayment;

(c) The date of enrollment status change;

(d) The academic term and award period; and

(e) The calculation used for determining the refund or repayment.

(7) Failure of the institution to make restitution if required shall, without precluding other remedies, be deemed cause for limitation, suspension or termination of the participation of the institution in accordance with 11 KAR 4.020.

Section 7. Incorporation by Reference. (1) The "Go Higher Grant Program Application", December 2006, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. SARAH LAWS, Chair

APPROVED BY AGENCY: November 29, 2007

FILED WITH LRC: December 13, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, January 22, 2008, at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Contact Person:** Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application procedures and selection criteria for the Go Higher Grant program pursuant to KRS 164.748(4).

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish a grant program for nontraditional students as provided in KRS 164.744(2) and 164.753(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing a new grant program, this administrative regulation will assist the Authority in carrying out its statutory mandate.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by increasing the expected family contribution limit for participation in the grant program and by eliminating from the eligibility criteria the requirement that an applicant have never attend a postsecondary institution in order to participate in this program. Further, this amendment will change the administrative regulation by eliminating from the eligibility criteria the requirement that a recipient must not have been convicted of a felony and instead requiring only that a recipient must not be incarcerated at the time of receipt of an award under this program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to expand participation in this grant program to those who would otherwise be qualified to receive awards under this program.

(c) How the amendment conforms to the content of the authorizing statutes. This amendment conforms to the content of the authorizing statutes by increasing accessibility to this grant program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by making the grant program available to a greater number otherwise qualified students.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All nontraditional students in Kentucky, especially GED recipients, who are or may become enrolled at an eligible postsecondary institution on less than a half-time basis could potentially be positively impacted by this administrative regulation.

(4) Provide an analysis of how the entities identified in (3) above will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: No action will be required of the students impacted by this regulation in order to comply therewith.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No action will be required of the students impacted by this regulation in compliance therewith.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By applying for financial assistance under this program, applicants will be considered for the award even with a previous felony conviction, provided the other eligibility criteria are satisfied. Further, applicants with a higher expected family contribution will now be eligible to receive awards

under this program, assuming they satisfy the other requirements hereunder.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost

(b) On a continuing basis: Same as (5)(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for this grant program is provided through a General Fund appropriation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

## FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.746(6), 164.748(4), 164.7535.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

## KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (Amendment)

### 11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.744(2), 164.753(3), 164.769  
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 164.769(5), (6)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships and KRS 164.753(3) requires the Kentucky Higher Education Assis-

tance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Critical shortage area" is defined in KRS 164.769(2)(a).

(3) "Eligible program of study" is defined in KRS 164.769(2)(b).

(4) "Expected family contribution" is defined in KRS 164.769(2)(c).

(5) "Kentucky Teacher Internship Program (KTIP)" means "beginning teacher internship" as defined in 16 KAR 2:010, Section 1(4).

(6) "Participating institution" is defined in KRS 164.769(2)(d).

(7) "Professional Teaching Certificate" is defined in 16 KAR 2:010, Section 1(9).

(8)(6) "Public school" means the common schools of the commonwealth providing preschool, elementary, middle school, or secondary instruction.

(9)(7) "Qualified teaching service" is defined in KRS 164.769(2)(e).

(10)(8) "Semester" is defined in KRS 164.769(2)(f).

(11)(9) "Summer term" is defined in KRS 164.769(2)(g).

(12)(10) "Teaching" means performing continuous classroom instruction pursuant to a Professional Teaching Certificate or during participation in the Kentucky Teacher Internship Program (KTIP), and does not include substitute teaching. ~~[as the teacher of record in a position for which appropriate regular teacher certification is a prerequisite to perform the instruction, and does not mean classroom instruction performed pursuant to an emergency certification or a certificate for substitute teaching.]~~

Section 2. Eligibility of Renewal Applicants and Selection Process. (1) Applicants shall complete the Teacher Scholarship Application set forth in 11 KAR 4:080, Section 1(3), according to its instructions. The applicant shall ensure that the completed application and supporting data indicating the applicant's financial need are received by the authority on or before May 1, or the next regular business day if May 1 falls on a weekend or holiday, preceding the academic year for which the award is requested.

(2) Eligibility of renewal applicants.

A person who previously received a loan or scholarship pursuant to KRS 164.769 shall be eligible to apply for and be considered for a renewal teacher scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

(3) After awards are made to all qualified renewal applicants, applicants shall be considered and teacher scholarships shall be awarded to recipients in the following order until funds are depleted

(a) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been unconditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.

(b) Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program shall be ranked in ascending order by expected family contribution.

(c) Otherwise eligible initial applicants seeking admission to a teacher education program shall be ranked in ascending order by

expected family contribution.

Section 3. Award Maximums. (1) The amount of a teacher scholarship award shall be calculated by determining the student's total cost of education minus expected family contribution and the amount of financial aid received or expected to be received during the academic period. The amount of financial aid received or expected to be received during the academic period shall not include any amounts available from any student loan or work-study programs.

(2) The maximum teacher scholarship award for a student classified as a junior, senior, postbaccalaureate, or graduate shall be \$1,250 for a summer session, \$2,500 for a semester, and \$5,000 for an academic year (exclusive of a summer session).

(3) The maximum teacher scholarship award for a student classified as a freshman or sophomore shall be \$325 for a summer session, \$625 for a semester, and \$1,250 for an academic year (exclusive of a summer session).

(4) The maximum award to an eligible student enrolled less than full time in the last semester or summer term during which a baccalaureate, postbaccalaureate or master's degree will be completed shall be:

(a) \$210 per credit hour if the student is enrolled during a regular semester; or

(b) \$105 per credit hour if the student is enrolled in a summer term.

Section 4. Disbursements. (1) Disbursement of a teacher scholarship shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

(2) The monies awarded under the Teacher Scholarship Program shall be transmitted directly to the participating institution on behalf of all students eligible to receive the scholarship by electronic funds transfer.

(3) The authority shall send to the participating institution a disbursement roster containing each recipient's name and Social Security number.

(4) The participating institution shall hold the funds solely for the benefit of the student eligible to receive the scholarship and the authority until the recipient has registered for classes for the period of enrollment for which the scholarship is intended.

(5) Upon the recipient's registration, the participating institution shall immediately credit the recipient's account and notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.

(6) The participating institution shall indicate on the disbursement roster the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for whom funds are being returned, the amount being returned, and the reason funds are being returned.

(7) If a recipient does not register for the period of enrollment for which the scholarship was awarded, or a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the school shall return the proceeds to the authority pursuant to Section 10 of this administrative regulation.

(8) The school shall retain a copy of the disbursement roster for its records and forward the original roster and any undisbursed scholarship funds to the authority not later than thirty (30) days following receipt of the roster and the funds.

(9)(a) If a recipient subsequently refuses to repay the scholarship on grounds that he was unaware of or did not receive delivery of the scholarship proceeds from the school, upon written request from the authority, the school shall promptly provide documentary evidence to the authority that the recipient received or had funds credited to his student account and was notified of this transaction.

(b) The school shall otherwise reimburse the authority for any amount of the scholarship that is unenforceable absent that documentary evidence.

(c) The obligation of the school to provide the documentary

evidence specified in paragraph (a) of this subsection shall continue until the recipient's obligations for repayment of the scholarship is paid in full or otherwise discharged.

**Section 5. Cancellation.** (1) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(c) if:

(a) The authority determines that an area is no longer a critical shortage area; and

(b) The recipient continues to render qualified teaching service in the area.

(2) If a recipient has received loans or scholarships from more than one (1) program administered by the authority, which require a period of qualified teaching service for repayment or cancellation, the teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received. If a recipient has received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.

(3) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

**Section 6. Repayment.** (1) A recipient failing to attain certification after completion of the eligible program of study or to commence rendering qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the authority grants a deferment for cause.

(2) The interest rate applicable to repayment of a teacher scholarship under this section shall be six (6) percent per annum beginning April 1, 2005. Prior to April 1, 2005, the interest rate shall be twelve (12) percent per annum.

**Section 7. Disability Discharge.** A conditional or permanent discharge of the repayment obligation under this program shall be granted by the Authority upon submission by the recipient of the appropriate documentation

(1) Conditional discharge. A conditional discharge shall be granted for a two year period, subject to annual review by the Authority, upon the submission of one of the following as proof of the recipient's qualifying disability.

(a) A finding of permanent disability by the Social Security Administration; or

(b) A completed Teacher Scholarship Program Application for Discharge, which shall include a certification by the recipient's treating physician that the recipient is unable to work or earn money and that the condition is expected to persist indefinitely.

(2) Permanent discharge. At the expiration of the two (2) year Conditional Discharge period specified in subsection (1) of this section, the Authority shall grant a permanent discharge to a recipient under this program upon the submission by the recipient of current documentation verifying that the qualifying disability exists at the time the permanent discharge is granted.

**Section 8. Notifications.** A recipient shall notify the authority within thirty (30) days of:

- (1) Change in enrollment status;
- (2) Cessation of full-time enrollment in an eligible program of study;
- (3) Employment in a qualified teaching service position; or
- (4) Change of name or address.

**Section 9 [8-] Repayment Schedule.** Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon

mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

**Section 10[9-] Records.** A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

**Section 11 [40-] Refunds.** (1) A student who fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after his first day of class of the period of enrollment or changes enrollment status may be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority, all or a portion of the refund and repayment shall be due to the authority for its financial assistance programs in accordance with this section.

(3) The institution shall adopt and implement a fair and equitable refund policy for financial assistance administered by the authority which shall be:

- (a) A clear and conspicuous written statement;
- (b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently-enrolled students;
- (c) Consistently administered by the institution; and
- (d) Made available to the authority upon request.

(4) The institution's refund policy for financial assistance administered by the authority shall either:

- (a) Use the same methods and formulas for determining the amount of a refund as the institution uses for determining the return of federal financial assistance funds; or
- (b) Be a separate and distinct policy adopted by the institution that is based upon:

1. The requirements of applicable state law; or
2. The specific refund standards established by the institution's nationally-recognized accrediting agency.

(5) The amount of the refund shall be determined in accordance with the educational institution's refund policy relative to financial assistance funds, except as provided in subsection (7) of this section.

(6) If the institution determines that a refund of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment in the following descending order of priority prior to allocating the refund to institutional or private sources of financial assistance:

- (a) CAP grant;
- (b) KTG;
- (c) Teacher scholarship;
- (d) Kentucky Educational Excellence Scholarship;
- (e) National Guard tuition assistance; and
- (f) Early Childhood Development Scholarship.

(7)(a) If a teacher scholarship recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an overaward and a full refund and repayment of the teacher scholarship shall be required, notwithstanding any institutional policy to the contrary.

(b) If the institution is unable to document the student's last date of attendance, any teacher scholarship disbursement for that award period shall be subject to full refund.

(c) If a teacher scholarship recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full teacher scholarship shall be subject to

1. Cancellation, if not yet disbursed, or
2. refund if the teacher scholarship has already been disbursed.

(8)(a) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(b) Refunds by the institution transmitted to the authority shall be accompanied by:

1. The student's name and Social Security number;
2. The reason for the refund;
3. The date of enrollment status change;
4. The semester and year; and
5. The calculation used for determining the refund.

Section 12 [44-] Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. The participating institution shall provide assurances that program information will be disseminated to students enrolled at the institution. The participating institution shall actively recruit students from minority population groups for participation in this program.

Section 13. Incorporation by Reference (1) "Teacher Scholarship Program Application for Discharge", November 2007, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. SARAH LAWS, Chair

APPROVED BY AGENCY: November 29, 2007

FILED WITH LRC: December 13, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, January 22, 2008, at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

(b) The necessity of this administrative regulation: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. This administrative regulation is necessary to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

tance Authority.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the Teacher Scholarship Program by establishing the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by adding "Kentucky Teacher Internship Program" and "Professional Teaching Certification" as defined terms for the Teacher Scholarship program and by amending the definition of "Teaching" under that program. Additionally, the amendment will change the existing administrative regulation by establishing a disability discharge of indebtedness under this program based upon the total and permanent disability of an award recipient.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to revise the definition of "teaching" to include the additional terms set forth in (2)(a) above as requirements for cancellation of the teacher scholarship obligation incurred hereunder. Further, the amendment is necessary to establish a disability discharge of indebtedness under this program based upon the total and permanent disability of an award recipient.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by revising the definition of "teaching" to include the additional terms set forth in (2)(a) above in order to more accurately describe the requirements for cancellation of the teacher scholarship obligation incurred hereunder. Further, the amendment conforms to the content of the authorizing statutes by establishing an additional basis upon which the scholarship indebtedness can be forgiven - the recipient's total and permanent disability.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by accurately setting forth the requirements for cancellation of the scholarship indebtedness under the program. Additionally, it will assist in the effective administration of the statutes by establishing the disability discharge to insure that those who are totally and permanently disabled are not required to repay the financial obligation under this program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Teacher Scholarship recipients who seek to have their scholarship indebtedness cancelled through the rendering of qualified teaching service. Additionally, those who may become totally and permanently disabled after receipt of a scholarship award under this program.

(4) Provide an analysis of how the entities identified in (3) above will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: Those recipients who seek to



have their scholarship indebtedness cancelled by rendering qualified teaching service will be required to render qualified teaching service per the terms established in this regulation. Those recipients who become totally and permanently disabled after receipt of an award under this program will be required to complete an application for a disability discharge in order to receive a disability discharge under this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to program recipients in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those recipients who render qualified teaching service as required under this regulation will receive forgiveness of their scholarship indebtedness. Those who become totally and permanently disabled after receipt of a scholarship award will receive a discharge of indebtedness.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost.

(b) On a continuing basis: Same as 5(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Teacher Scholarship Awards are funded from net lottery revenues transferred to the authority for grant and scholarship programs while administrative costs are borne by the authority through receipts of the authority.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(3), 164.769(5), (6)(f).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

quent years? No costs are associated with this regulation.

#### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (Amendment)

#### 11 KAR 8:040. Deferment of teacher scholarship repayment.

RELATES TO: KRS 164.744(2), 164.769

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 164.769(6)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.769 authorizes the authority to specifically provide a program of teacher scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7891. KRS 164.769(6)(f) requires the authority to promulgate administrative regulations establishing the terms and conditions for the award, cancellation, and repayment of teacher scholarships including deferments. This administrative regulation establishes conditions for deferment of the repayment obligation.

Section 1. Definitions. (1) "Authority" is defined by KRS 164.740(1).

(2) "Deferment" means a temporary waiver of the obligation of a teacher scholarship recipient to make payments to the authority, pursuant to one (1) or more promissory notes executed between the recipient and the authority, which is granted by the authority, for a specified period of time, upon a showing of cause by the recipient.

(3) "Eligible institution" is defined in KRS 164.740(3)

(4) "Kentucky Teacher Internship Program (KTIP)" means "beginning teacher internship" as defined in 16 KAR 2:101, Section 1(4).

(5) "Participating institution" is defined in KRS 164.769(2)(d).

(6) "Professional Teaching Certificate" is defined in 16 KAR 2:010, Section 1(9).

(7)(f) "Qualified teaching service" is defined in KRS 164.769(2)(e).

(8)(f) "Semester" is defined in KRS 164.769(2)(f).

(9)(f) "Teaching" means performing continuous classroom instruction pursuant to a Professional Teaching Certificate or during participation in the Kentucky Teacher Internship Program (KTIP), and does not include substitute teaching, [as the teacher of record in a position for which appropriate regular teacher certification is a prerequisite to perform the instruction, and does not mean classroom instruction performed pursuant to an emergency certification or a certificate for substitute teaching.]

Section 2. Request for Deferment. (1) The recipient shall request a deferment in writing by submitting complete and accurate information on one (1) of the following forms, as appropriate:

(a) "Teacher Scholarship Program Request For School Enrollment Deferment";

(b) "Teacher Scholarship Program Request For Unemployment Deferment";

(c) "Teacher Scholarship Program Request For Disability Deferment"; or

(d) "Teacher Scholarship Program Request For Hardship Deferment"; or

(e) "Teacher Scholarship Program Request For Alternative Certification Deferment"; or

(f) "Teacher Scholarship Program Request For Military Service Deferment".

(2) The recipient's submission of a request for deferment shall constitute authorization for the authority to request and receive the verification of facts represented by the recipient as may be deemed necessary by the authority.

Section 3. Effect on Repayments. (1) During a deferment, principal or interest repayments shall not be required. Interest shall:



(a) Continue to accrue on the unpaid principal balance owed by the recipient during a period specified in Section 4(1), (3), (4), or (5)(3) of this administrative regulation; and

(b) Not accrue during a period specified in Section 4(2) of this administrative regulation.

(2) The authority shall not be required to grant a deferment if the deferment would legally impair the ultimate recovery of the principal and accrued interest otherwise owed by the recipient.

(3) If, during a deferment, the recipient resumes full-time enrollment in a teacher education program at a participating institution or renders qualified teaching service, the deferment shall nullify the prior commencement of repayment, and a promissory note so deferred may be subsequently cancelled in accordance with 11 KAR 8.030.

Section 4. Types of Deferments. If the requirements established in this section are met, the authority shall grant an enrollment deferment, disability deferment, unemployment deferment, hardship deferment, military service deferment, alternative certification deferment, or qualified teaching service deferment.

(1) Enrollment deferment.

(a) An enrollment deferment shall be a deferment granted to a recipient who is enrolled on at least a half-time basis at an eligible institution in the United States.

(b) Each semester, the recipient shall provide to the authority evidence of the enrollment on the "Teacher Scholarship Program Request for School Enrollment Deferment" form.

(c) The Authority shall grant deferment of repayment upon this basis for a period not to exceed an aggregate of either:

1. Forty-eight (48) months for a recipient enrolled in a baccalaureate program; or
2. Sixty (60) months for a recipient enrolled in a graduate program.

(2) The authority shall grant deferment of repayment for periods not to exceed an aggregate of thirty-six (36) months for any one (1) or combination of the following circumstances, unless [except as limited in paragraph (b) of this subsection or if] a documented extenuating circumstance is approved by the executive director of the authority:

(a) Disability deferment.

1. A disability deferment shall be a deferment granted to a recipient who is:

- a. Temporarily totally disabled and, therefore, unable to obtain full-time employment or attend school; or
- b. Unable to obtain full-time employment or attend school due to the temporary total disability of the recipient's spouse who:
  - (i) Requires continuous (twenty-four (24) hour) nursing or similar care by the recipient; and
  - (ii) Is not confined to a hospital, nursing home, intermediate care facility, or similar institution.

2. For purposes of a disability deferment, a recipient, or the spouse of a recipient, shall be considered temporarily totally disabled if the person suffers an injury or illness which necessitates an extended or indefinite period of recovery which can be expected to preclude gainful employment or school attendance.

3. The recipient shall provide to the authority a statement from a licensed physician certifying that the recipient or spouse is temporarily totally disabled in accordance with subparagraphs 1 and 2 of this paragraph. The recipient shall be solely responsible for securing the physician's certification.

4. The authority shall grant a disability deferment subject to an annual review of the physician's certification.

5. After the third year of a disability deferment, the authority may cancel the debt if it appears that the disability is expected to continue for an indefinite time.

(b) Unemployment deferment. An unemployment deferment shall be granted to a recipient seeking, but unable to obtain, a qualified teaching service position within six (6) months following completion of a teacher education program at a participating institution [shall be granted a deferment not to exceed an aggregate of one (1) year]. The recipient shall:

1. Be eligible to begin the Kentucky Teacher Internship Program established in KRS 161.030(5) and 16 KAR 7.010;
2. Have applied for a qualified teaching service position with at

least three (3) state-accredited school districts;

3. Not have refused an offer of employment in a qualified teaching service position in the state-accredited school districts or in any other state-accredited school districts to which the recipient may have applied; and

4. Provide the authority with a signed statement which sets forth:

a. The recipient's current address;

b. The names of state-accredited school districts to which the recipient has applied for qualified teaching service employment; and

c. The recipient's agreement to notify the authority if the recipient obtains full-time employment in a qualified teaching service position.

(c) Hardship deferment. The authority shall determine that a hardship exists and grant a hardship deferment if:

1. Enrollment in a teacher education program or employment in a qualified teaching service position is temporarily interrupted due to circumstances beyond the recipient's control, including major illness, accident or death in the family, after which the recipient intends to resume the enrollment or qualified teaching position; or

2. The recipient is insolvent due to circumstances beyond his control, including natural disaster, involuntary unemployment, or unforeseen medical expenses.

(3) Military service deferment. The authority shall grant a military service deferment to a recipient upon proof of current active duty status in the United States Armed Forces, subject to annual review and verification by the authority.

(4) Alternative certification deferment.

(a) A deferment shall be granted to a recipient who has received a provisional certification by the Kentucky Education Professional Standards Board (EPSB) under one (1) of the alternative routes to teacher certification established by the EPSB in 16 KAR Chapter 9.

(b) The deferment shall be granted for up to thirty-six (36) months in order to allow sufficient time for the recipient to complete the Kentucky Teacher Internship Program and to obtain professional teaching certification.

(5) Qualified teaching service deferment.

(a) A deferment shall be granted to a recipient who, due to current employment in a qualified teaching service position, may reasonably be expected, solely with the passage of six (6) months or less time, to qualify for cancellation benefits pursuant to 11 KAR 8.030.

(b) The authority shall grant a deferment of the obligation to repay the teacher scholarship during the period of time in which the recipient is making payments or performing qualified teaching service for another program if:

1. The recipient received loans or scholarships from more than one (1) program that:

a. Is administered by the authority; and

b. Required a period of qualified teaching service for repayment or cancellation; and

2. The recipient is either:

a. Obligated to concurrently make cash payments on the teacher scholarship and other program; or

b. Performing qualified teaching service to fulfill the other program's requirements.

Section 5. Incorporation by reference. (1) The following material is incorporated by reference:

(a) "Teacher Scholarship Program Request For School Enrollment Deferment", March 2002;

(b) "Teacher Scholarship Program Request For Unemployment Deferment", March 2002;

(c) "Teacher Scholarship Program Request For Disability Deferment", March 2002; [and]

(d) "Teacher Scholarship Program Request For Hardship Deferment", March 2002;

(e) "KHEAA Teacher Scholarship Program Alternative Certification Deferment Request", November 2007; and

(f) "KHEAA Teacher Scholarship Program Military Service Deferment Request", November 2007.

(2) This material may be inspected, copied, or obtained, sub-

ject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. SARAH LAWS, Chair

APPROVED BY AGENCY: November 29, 2007

FILED WITH LRC: December 13, 2007 at 2 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on Tuesday, January 22, 2008, at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes conditions for deferment of the repayment obligation established under 11 KAR 8:030 for teacher scholarship recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to prescribe the conditions for deferment of the repayment obligation established under 11 KAR 8:030 for teacher scholarship recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.744(2) authorizes the authority to provide scholarship and KRS 164.769 authorizes the authority to specifically provide a program of teacher scholarships. KRS 164.784(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.785. KRS 164.769(6)(f) requires the authority to establish, by administrative regulation, the terms and conditions for the award, cancellation, and repayment of teacher scholarships including but not limited to, deferments. This administrative regulation prescribes conditions for deferment of the repayment obligation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the Teacher Scholarship Program by prescribing conditions for deferment of the repayment obligation established under 11 KAR 8:030 for teacher scholarship recipients in order to assist those individuals in circumstances when repayment would be burdensome.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by adding "Kentucky Teacher Internship Program" and "Professional Teaching Certification" as defined terms for the Teacher Scholarship program and by amending the definition of "Teaching" under that program. The amendment will also change this existing administrative regulation by establishing two additional types of deferment for the repayment obligation under the Teacher Scholarship program – Military Service Deferment and Alternative Certification Deferment – and incorporate by reference the application forms for these deferments. Further, this amendment will change the existing administrative regulation by eliminating the one

year limitation on the receipt of an unemployment deferment of the repayment obligation under the Teacher Scholarship program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to revise the definition of "teaching" to include the additional terms set forth in (2)(a) to mirror those terms and definitions found in 11 KAR 8:030. This amendment is also necessary to expand the deferment options under this program to include the two additional types set forth in (2)(a) above and to eliminate the one year limitation on the receipt of an unemployment deferment of the repayment obligation under the Teacher Scholarship program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by revising the definition of "teaching" to include the additional terms set forth in (2)(a) above in order to mirror those terms and definitions found in 11 KAR 8:030. The amendment also conforms to the content of the authorizing statutes by establishing additional types of deferment for the Teacher Scholarship program and by eliminating the one year limitation for receipt of the unemployment deferment under this program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by revising the definition of "teaching" to include the additional terms set forth in (2)(a) above in order to mirror those terms and definitions found in 11 KAR 8:030. This amendment will also assist in the effective administration of the statutes by establishing additional types of deferments as well as by eliminating the one year limitation for receipt of the unemployment deferment under this program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Teacher Scholarship recipients seeking deferment of their repayment obligation under this program could potentially be positively affected by the expansion of the range of deferment options available.

(4) Provide an analysis of how the entities identified in (3) above will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: Those recipients who seek to have repayment of their scholarship indebtedness deferred on the basis of either Military Service or Alternative Certification will be required to complete an application for this type of deferment in order to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to program recipients in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those recipients who apply for deferments of their repayment obligation under this program will receive deferments on the bases set forth in this amendment, provided they satisfy all of the requirement thereunder.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: See (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the Teacher Scholarship Program is provided through net lottery proceeds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not

applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients

#### FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(3), 164.769(5), (6)(f).
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.
  - a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.
  - b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.
  - c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.
  - d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

#### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (Amendment)

#### 11 KAR 14:080. Deferment of Osteopathic Medicine Scholarship Program repayment.

RELATES TO: KRS 164.740, 164.7891

STATUTORY AUTHORITY: KRS 164.7891(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7891(9) requires the authority to promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program. This administrative regulation establishes conditions for deferment of the repayment obligation under the Osteopathic Medicine Scholarship Program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Deferment" means a temporary waiver of the obligation of an osteopathic medicine scholarship recipient to make payments to the authority pursuant to one (1) or more promissory notes, executed between the recipient and the authority, which is granted by the authority, for a specified period of time, upon a showing of cause by the recipient.

(3) "Full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year" means practicing in a qualified field for at least 2000 hours per

calendar year.

(4) "Qualified field" means family practice, general practice, general internal medicine, general pediatrics, general obstetrics or gynecology.

(5) "Qualified service" is defined in KRS 164.7891(3)(c).

Section 2. Request for Deferment. (1) The osteopathic medicine scholarship recipient shall request a deferment in writing by submitting to the authority complete and accurate information verifying the recipient's circumstances that qualify for deferment in accordance with this administrative regulation.

(2) The recipient's submission of a request for deferment shall constitute authorization for the authority to request and receive from a third-party verification of facts represented by the recipient.

Section 3. Effect on Repayment. (1) During a deferment.

(a) A principal or interest repayment shall not be required; and

(b) Interest shall continue to accrue on the unpaid principal balance owed by the recipient during the period specified in Section 4(4)(3) of this administrative regulation.

(2) The authority shall not grant a deferment if a deferment would legally impair the ultimate recovery of the principal and accrued interest otherwise owed by the recipient.

(3) A promissory note for which repayment is deferred in accordance with this administrative regulation shall subsequently be cancelled in accordance with KRS 164.7891(5) if the osteopathic medicine scholarship recipient resumes full-time enrollment in an accredited program of study at a school of osteopathic medicine located in the Commonwealth or renders qualified service.

Section 4. Types of Deferments. The authority shall grant deferment of repayment for a period of twelve (12) months ~~one (1) year~~, not to exceed an aggregate of thirty-six (36) months, excluding military service deferment and ~~internship and residency deferment~~, for the following circumstances:

(1) Disability deferment.

(a) A deferment may be granted to an osteopathic medicine scholarship recipient who is:

1. Temporarily totally disabled and, therefore, unable to attend school or perform qualified service; or

2. Unable to attend school or perform qualified service due to the temporary, total disability of the osteopathic medicine scholarship recipient's spouse who requires continuous (twenty-four (24) hour) nursing or similar care by the recipient.

(b) For purposes of this deferment, an osteopathic medicine scholarship recipient, or the spouse of a recipient, shall be considered temporarily totally disabled if he suffers an injury or illness which necessitates an extended or indefinite period of recovery which can be expected to preclude school attendance or employment and, in case of a recipient's spouse, he is not confined to a hospital, nursing home, intermediate care facility, or similar institution.

(c) The recipient shall provide to the authority a statement from a licensed physician (other than the osteopathic medicine scholarship recipient) certifying that the recipient or spouse is temporarily totally disabled in accordance with the requirements established in paragraph (b) of this subsection. The recipient shall be solely responsible for securing the physician's certification and ensuring that it is received by the authority.

(d) If the deferment is granted for a period of less than one (1) year at a time, the deferment shall be subject to periodic review of a physician's certification every six (6) months.

(e) After the third year of a recipient's deferment, pursuant to this subsection, the authority shall cancel the debt if it reasonably appears to the authority based on the certification of a licensed physician other than the scholarship recipient that the scholarship recipient is totally disabled and the disability is expected to be permanent and continue to preclude the scholarship recipient's school attendance and employment for an indefinite time.

(2) Hardship deferment. The authority shall determine that a hardship exists and grant a hardship deferment if:

(a) Enrollment in an accredited program at a school of osteopathic medicine located in the Commonwealth or performance of qualified service is temporarily interrupted due to circumstances

beyond the recipient's control, including natural disaster or death in the family, after which the recipient intends to resume the enrollment or qualified service position; or

(b) The recipient is insolvent due to circumstances beyond his control, including natural disaster, involuntary unemployment, or unforeseen medical expenses.

(c) This deferment shall:

1. Be granted for a period of less than one (1) year; and

2. ~~[Not exceed an aggregate of twelve (12) months; 3.]~~ Be subject to periodic review of documentation every six (6) months.

(3) Military service deferment. The authority shall grant a military service deferment to a recipient upon proof of current active duty status in the United States Armed Forces, subject to annual review and verification by the authority.

(4) Internship and residency deferment.

(a)1. An osteopathic medicine scholarship recipient shall receive a deferment during the normal term of service in a single American Osteopathic Association approved rotating Internship in osteopathic medicine prior to beginning practice in osteopathic medicine.

2. An osteopathic medicine scholarship recipient shall receive a deferment during the normal term of service in:

a. A single American Osteopathic Association approved residency program in a qualified field; or

b. the Family Practice plus One year Neuromuscular Medicine (FP+1) residency program.

(b) The recipient shall submit to the authority verification that he is enrolled in the internship or residency program, the start date, and anticipated end date of the internship or residency from the hospital, clinic, or other institution where the internship or residency is being performed.

(c) This verification shall contain the following information:

1. The recipient's name, Social Security number, current home address, and telephone number;

2. The name and address of the hospital, clinic, or other institution where the internship or residency is being performed;

3. The name, title, address, telephone number, and signature on a statement of certification or verification of the person supervising the recipient's internship or residency program; and

4. The expected date that the internship or residency program will be completed.

(d) A recipient whose period of obligated service has been deferred under this subsection shall begin full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year in a qualified field immediately following the completion of the initial residency period and licensure to practice osteopathic medicine in the Commonwealth of Kentucky.

DR. SARAH LAWS, Chair

APPROVED BY AGENCY: November 29, 2007

FILED WITH LRC: December 13, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, January 22, 2008, at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes conditions for deferment of the repayment obligation under the Osteopathic Medicine Scholarship Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish conditions for deferment of the repayment obligation established under the Osteopathic Medicine Scholarship Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.7891 requires the authority to promulgate administrative regulations for the administration of the Osteopathic Medicine Scholarship Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the Osteopathic Medicine Scholarship Program by establishing the conditions for deferment of the repayment obligation established under the Osteopathic Medicine Scholarship Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment to the existing administrative regulation will eliminate the one year limitation currently imposed for receipt of a hardship deferment on repayment of the scholarship obligation incurred under this program. Additionally, the amendment will establish a military service deferment for repayment under the Osteopathic Medicine Scholarship program.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to further establish provisions for deferment of the repayment obligation under the Osteopathic Medicine Scholarship as provided for in KRS 164.748(4), 164.753(3), and 164.7891(9).

(c) How the amendment conforms to the content of the authorizing statutes: KRS 164.7891 requires the authority to promulgate administrative regulations for the administration of the Osteopathic Medicine Scholarship Program including the establishment of criteria for deferment of the repayment obligation under the program. The amendment to this administrative regulation will further establish deferment provisions for the program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing additional options for deferment of the repayment obligation under the Osteopathic Medicine Scholarship as provided for in KRS 164.748(4), 164.753(3), and 164.7891(9).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Osteopathic Medicine Scholarship recipients could be positively impacted by this amendment to this administrative regulation.

(4) Provide an analysis of how the entities identified in (3) above will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: Those recipients who seek to have repayment of their scholarship indebtedness deferred on the basis of economic hardship will be required to provide proof of the condition in order to receive a deferment under this amendment. Additionally, those recipients who seek to defer repayment of their scholarship indebtedness on the basis of military service will be required to submit proof of current active duty service in order to receive a deferment under this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to program recipients in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Those recipients who submit proof of hardship will receive a deferment of their repayment obligation for up to thirty-six months provided they have additional deferment eligibility. Further, those who are actively serving in the military will receive a military service deferment upon proof of their current service.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: It is estimated that there will be no cost to the authority associated with the implementation of this administrative regulation.

(b) On a continuing basis: See (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the Osteopathic Medicine Scholarship Program is provided by a percentage of the coal severance tax appropriated by the General Assembly for that purpose.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

#### FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.7891(9)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The amendment to this administrative regulation merely expands the availability of deferment of a repayment obligation to the Authority. Accordingly, no effect either the expenditures or revenue of the agency is anticipated.

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue

c. How much will it cost to administer this program for the first year? No additional costs will be incurred as a result of this amendment.

d. How much will it cost to administer this program for subse-

quent years? No additional costs will be incurred as a result of this amendment.

#### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (Amendment)

#### 11 KAR 16:001. Definitions for 11 KAR Chapter 16.

RELATES TO: KRS 164.518

STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes definitions applicable to 11 KAR Chapter 16.

Section 1. Definitions. (1) "Academic term" means the fall, spring, or summer semester or its equivalence under a trimester or quarter system at a postsecondary education institution.

(2) "Authority" is defined in KRS 164.740(1).

(3) "Award year" means a period that begins July 1 of one (1) calendar year and ends June 30 of the next succeeding calendar year.

(4) "Capstone semester" means the culmination semester in an Interdisciplinary Early Childhood Education (IECE)/Early Childhood Program which:

(a) requires additional hours of direct work with children; and  
(b) may be listed as student teaching or a practicum.

(5) "Early childhood facility" means:

(a) A licensed Type I or a Type II day care facility defined in 922 KAR 2:001 that is located in Kentucky;

(b) A certified family child care home pursuant to KRS 199.8982 and 922 KAR 2:100 that is located in Kentucky;

(c) An organization approved by the Office of Inspector General of the Cabinet for Health and Family Services to offer training in early childhood development; or

(d) A developmentally appropriate preschool program defined in KRS 157.3175(2).

(6) "ECDA" means Early Childhood Development Authority.

(7) "ECDA-approved early childhood development credential" means the Child Development Associate's credential or a postsecondary, undergraduate degree, certificate or diploma that is:

(a) An associate degree in early childhood education or baccalaureate degree in interdisciplinary early childhood education, or a related program that is approved by the Early Childhood Development Authority; or  
(b) The Kentucky Early Childhood Development Director's Certificate.

(8) "Eligible institution" is defined in KRS 164.740(3).

(9) "Participating early childhood facility" means an early childhood facility that agrees to provide monetary incentives pursuant to 11 KAR 16:060 to early childhood development scholarship recipients employed by the facility.

(10) "Participating educational institution" means an eligible institution located in Kentucky that:

(a) Actively participates in the federal Pell Grant Program;

(b) Offers a scholarship program curriculum;

(c) Has a contract in force with the authority relating to the administration of the Early Childhood Development Scholarship Program and other programs administered by the authority, and

(d) 1. Is publicly operated; or

2 a. Is licensed by the Commonwealth of Kentucky;

b. Has operated for at least ten (10) years;

c. Offers a program of study not comprised solely of sectarian instruction; and

d. Admits as regular students only:

(i) High school graduates,

(ii) Recipients of a general equivalency diploma; or

(iii) Students transferring from another accredited degree granting institution.

(11) "Preschool associate teacher" means a classified employee who:

(a) Is employed by a local school district in a paraprofessional role to organize, manage, and provide direct instruction to children below primary school age under the supervision of a qualified professional, and

(b) Meets the requirements of 704 KAR 3:420.

(12) "Professional development counselor" means an individual ~~employed by a regional child care resource and referral agency~~ with the responsibilities to recruit candidates, process the applications, and follow as indicated the procedures established in 11 KAR Chapter 16.

(13) "Professional development funds" means state or federal training funds available through the Head Start Program, a public preschool program, or the Kentucky Early Intervention System (First Steps Program).

(14) "Scholarship" means an Early Childhood Development Scholarship.

(15) "Scholarship program curriculum" means an academic course or series of courses that does not lead to a certificate, diploma, or degree in theology, divinity, or religious education offered by a participating educational institution needed to obtain an ECDA-approved early childhood development credential.

(16) "Teaching assistant" means an instructional aide in a public school preschool program as set forth in 704 KAR 3:410.

DR SARAH LAWS, Chair

APPROVED BY AGENCY: November 29, 2007

FILED WITH LRC: December 13, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, January 22, 2008, at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the definitions of terms used in the administration of the Early Childhood Development Scholarship Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define or reference certain statutory definitions of terms commonly used in the administration of the Early Childhood Development Scholarship Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority to promulgate administrative regulations, after consultation with the Early Childhood Development Authority (ECDA) and the Cabinet for Families and Children, for the administration of the Early Childhood Development Scholarship Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The benefits expected from this administrative regulation are the establishment of uniform meaning of commonly used terms in the administration of the Early Childhood Development Scholarship Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative

regulation: The amendment will change this existing administrative regulation by revising the definition of "professional development counselor" to eliminate the requirement of employment with a regional childcare resource and referral agency.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to accurately reflect the practice by the Early Childhood Development Authority (ECDA) with regard to selecting individuals as professional development counselors.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require the Authority to promulgate administrative regulations establishing terms and conditions for the administration of the Early Childhood Development Scholarship program. The amendment to this administrative regulation conforms to the content of those statutes by revising one of the definitions applicable to the program.

(d) How the amendment will assist in the effective administration of the statutes: The authorizing statutes require the Authority to promulgate administrative regulations establishing terms and conditions in order to administer the Early Childhood Development Scholarship program. The amendment to this administrative regulation enhances the administration thereof by revising one of the definitions applicable to the program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those seeking employment as professional development counselors under the Early Childhood Development Scholarship program could be positively impacted by this amendment.

(4) Provide an analysis of how the entities identified in (3) above will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: No action will be required of those individuals impacted by this regulation in order to comply therewith.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be imposed on those individuals impacted by this regulation in compliance therewith.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By applying to be professional development counselors under this program, the impacted individuals will be considered for the position without having to be employed by a regional childcare resource and referral agency as a prerequisite.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: See paragraph (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. Funding for the Early Childhood Development Scholarship Program is provided through money designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states and related federal legislation, as provided in 2000 Ky. Acts ch. 549, Part XI.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The concept of tiering is not applicable to this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which cer-



tain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

#### FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.518(3), 164.748(4).
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.
  - a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.
  - b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.
  - c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.
  - d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

#### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (Amendment)

#### 11 KAR 16:010. Early Childhood Development Scholarship Program applicant selection process.

RELATES TO: KRS 164.518

STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes the applicant selection process for the Early Childhood Development Scholarship Program.

Section 1. Eligibility of Applicants. (1) Initial eligibility. To qualify for an Early Childhood Development Scholarship, an applicant shall:

(a) Be:

1. A citizen, national, or permanent resident of the United States;
2. A Kentucky resident as determined by the participating educational institution in accordance with criteria established in 13 KAR Chapter 2 by the Council on Postsecondary Education for the purposes of admission and tuition assessment;
3. A high school graduate or a General Educational Development (GED) recipient.
4. Unless the applicant is seeking scholarship renewal and has registered for a capstone semester.
  - a. Employed at least twenty (20) hours per week in a participat-

ing early childhood facility;

b. Employed to provide training at least twelve (12) times per year in early childhood development by a participating early childhood facility approved by the Office of Inspector General of the Cabinet for Health and Family Services to offer the training; or

c. Employed at least twenty (20) hours per week, providing direct instruction to children as a preschool associate teacher or as a teaching assistant in a public preschool program by a participating early childhood facility;

5.[4]-a. Except as provided in clause b of this subparagraph, enrolled in no more than nine (9) credit hours, or the equivalent under a trimester or quarter system, per academic term in the scholarship program curriculum at a participating educational institution;

b. An applicant who is enrolled in the final semester of study before earning an ECDA-approved early childhood [development] credential, associate degree, or bachelor's degree may be enrolled in a capstone course requiring full-time enrollment, but shall not receive an award amount for more than nine (9) credit hours of enrollment;

6.[5]- Pursuing an ECDA-approved

a. Early childhood development credential;

b. Associate degree; or

c. Bachelor's degree.

7.[6]- Ineligible to receive professional development funds from another education program; and

8.[7]- Maintaining satisfactory academic progress as determined by the participating institution;

(b) Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause; and

(c) Not be:

1. In default on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099, unless eligibility has been reinstated;

2. Liable for any amounts that exceed annual or aggregate limits on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099; and

3. Liable for overpayment of any grant or loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099.

(2) Renewal eligibility. Persons seeking additional early childhood development scholarships shall:

(a) Meet the eligibility requirements of subsection (1) of this section; and

(b) Be making satisfactory academic progress toward the completion of the ECDA-approved early childhood development credential as determined by the participating institution.

(3) Appeal of determination.

(a) A student denied a scholarship for a reason other than lack of funds may appeal the determination by the ECDA.

(b) A student shall submit a written statement of appeal to the ECDA within fifteen (15) calendar days after the date of notification of denial.

(c) If a student appeals a scholarship denial, the ECDA shall ensure that:

1. A hearing officer or committee appointed by ECDA shall consider the student's appeal and make a decision on the issues involved; and

2. The student's due process rights, including the right to present information in support of his claim of eligibility and the right to be represented by legal counsel, are protected.

(4) Commitment of service. A scholarship applicant shall commit that he or she shall subsequently render service:

(a) For six (6) months at a participating early childhood facility upon obtaining the child development associate certificate, paid for in part by a scholarship;

(b) For one (1) year at a participating early childhood facility upon obtaining the early childhood development credential of an associate degree or the Kentucky Early Childhood Development Director's Certificate, paid for in part by a scholarship; or

(c) For six (6) months at a participating early childhood facility and one (1) additional year at an early childhood facility located in



Kentucky upon obtaining the early childhood development credential of a baccalaureate degree, paid for in part by a scholarship.

**Section 2. Application.** (1) Prior to the beginning of each academic term, a person seeking an early childhood development scholarship shall obtain an Early Childhood Development Scholarship Application set forth in 11 KAR 4:080, Section 1(4)(b), from the KHEAA Web site, [www.kheaa.com/prog\\_ecds.html](http://www.kheaa.com/prog_ecds.html). The applicant shall complete the on-line application.

(2) The applicant shall.

(a) Print the employer verification page from the completed application;

(b) Have this page certified by an authorized representative of the participating early childhood facility; and

(c) Submit the certified page to the professional development counselor on or before:

1. July 15, or the next regular business day if July 15 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;

2. November 15, or the next regular business day if November 15 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested, or

3. April 15, or the next regular business day if April 15 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

(3) The applicant shall also complete and submit to the United States Department of Education the Free Application for Federal Student Aid ("FAFSA") set forth in 11 KAR 4:080, Section 1(4)(a). This application shall be completed either in paper format or electronically via the Internet.

**Section 3. Selection Process.** (1) The professional development counselor shall verify the application information and determine the eligibility of the applicant.

(2) The professional development counselor shall recommend scholarship awards for eligible applicants in the following order until funds are depleted:

(a) First, scholarships shall be awarded to eligible renewal applicants, ranked in order of the date and time the application is submitted.

(b) Next, scholarships shall be awarded to eligible new applicants, ranked in order of the date and time the application is received by the professional development counselor.

(3) The professional development counselor shall forward to the ECDA the applications of those persons recommended to receive a scholarship and ensure that the applications are received by the ECDA no later than:

(a) July 22, or the next regular business day if July 22 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested,

(b) November 22, or the next regular business day if November 22 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or

(c) April 22, or the next regular business day if April 22 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

(4) The employer signature page shall be received by the ECDA no later than August 1, December 1, and May 1 of the appropriate semester.

(5) ECDA shall certify the eligibility determination of approved applicants.

**Section 4** (1) **Award amount** The scholarship amount awarded to an eligible applicant for an academic term shall be the amount of tuition actually charged for the academic term by the participating educational institution that the scholarship recipient will be attending based on the recipient's enrollment status, but shall not exceed.

(a) The amount of tuition charged for enrollment in nine (9) credit hours; and

(b) The award maximum.

(2) **Award maximum.** The maximum scholarship amount awarded to an eligible applicant for an award year shall be \$1,800.

DR. SARAH LAWS, Chair

APPROVED BY AGENCY: November 29, 2007

FILED WITH LRC: December 13, 2007 at 2 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on Tuesday, January 22, 2008, at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON** Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, (fax) (502) 696-7293.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the applicant selection process for the Early Childhood Development Scholarship program as authorized by KRS 164.518(3).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the application selection process for the Early Childhood Development Scholarship program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority to promulgate administrative regulations pertaining to the Early Childhood Development Scholarship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation assists in the effective administration of the statutes by establishing the applicant selection process required for administrative of the Early Childhood Development Scholarship program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation. The amendment will change this existing administrative regulation by providing that, in addition to the other requirements set forth in the regulation, an initial applicant for an award under the Early Childhood Development Scholarship program must be either a high school graduate or a General Educational Development (GED) recipient. Additionally, the amendment will extend eligibility for the scholarship to initial applicants who are pursuing an associate or bachelor's degree in a program approved by the Early Childhood Development Authority.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to establish additional eligibility criteria for initial applicants to the Early Childhood Development Scholarship program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by establishing additional eligibility criteria for the participation by initial applicants in the Early Childhood Development Scholarship program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by establishing additional eligibility criteria for initial applicants for participation in the Early Childhood Development Scholarship program.

arship program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment would affect any initial applicant who is otherwise eligible to participate in the Early Childhood Development Scholarship program.(4) Provide an analysis of how the entities identified in (3) above will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: Applicants for scholarship awards under this program will be required to have either graduated high school or received a GED in order to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be required of the students impacted by this regulation in compliance therewith.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By applying for an award under this program, recipients will receive awards provided they are either high school graduate or GED recipients, assuming they satisfy the other eligibility criteria.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the Early Childhood Development Scholarship Program is provided by appropriations from the Tobacco Settlement Fund. The authority does retain some of the funds for the costs associated in administering the Early Childhood Development Scholarship Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees will be necessary. No increase in fees or funding will be necessary to amend this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. It does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

#### FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.518(3), 164.748(4).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

a. How much revenue will this administrative regulation gener-

ate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

#### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (Amendment)

#### 11 KAR 16:060. Early Childhood Development Scholarship Program system of monetary incentives.

RELATES TO: KRS 164.518

STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes responsibility for administration of the system of monetary incentives offered to Early Childhood Development Scholarship recipients.

Section 1. Textbook Expense Reimbursement. (1) The scholarship recipient shall present to his employer at the participating early childhood facility a receipt for the purchase of textbooks for the scholarship program curriculum. The scholarship recipient shall present the receipt to his employer ~~no~~ later than the end of the academic term to be eligible to receive a textbook expense reimbursement for the academic term.

(2) The participating early childhood facility shall, no later than fifteen (15) days after presentation of a receipt for textbook purchase, reimburse the scholarship recipient for the actual cost of the textbooks not to exceed fifty (50) dollars per academic term and \$150 per academic year.

(3) The participating early childhood facility shall, upon request by the professional development counselor, provide evidence of reimbursement of scholarship recipients for textbooks.

Section 2. Related Educational Expense Reimbursement. (1) The scholarship recipient shall earn a grade of at least "C" or its equivalent in each course in which the scholarship recipient is enrolled for credit during the academic term to be eligible for reimbursement of related educational expenses. Related educational expense reimbursement shall be provided only to the extent funds are available.

(2) The scholarship recipient shall present to the professional development counselor no later than sixty (60) days following completion of the academic term an official grade report from the participating educational institution as evidence of completion of the scholarship program curriculum with a grade of at least "C" or its equivalent in each course in which the scholarship recipient is enrolled for credit during the academic term.

(3) The amount of the related educational expense reimbursement shall be:

(a) Fifty (50) dollars to a scholarship recipient pursuing a child development associate's credential at a participating educational institution; or

(b) \$100 to a scholarship recipient pursuing an ECDA-approved early childhood development credential, other than a child development associate's, or an ECDA-approved associate or bachelor's degree credential.

(4) The professional development counselor, no later than thirty (30) days after considering whether the scholarship recipient is eligible to receive reimbursement of related educational expenses associated with attendance at the participating educational institution, shall notify the scholarship recipient in writing of the

determination of eligibility for the reimbursement of related educational expenses and the amount of the award.

(5)(a) After determination of eligibility, the professional development counselor shall transmit to the Department for Community Based Services in the Division of Child Care of the Cabinet for Health and Family Services~~[Families and Children]~~ a list of eligible recipients of reimbursement of related educational expenses. The list shall indicate:

1. The name, home address, and Social Security number of the award recipient; and
2. The amount of the reimbursement of related educational expenses earned by the recipient.

(b) The Cabinet for Health and Family Service~~[Families and Children]~~ shall remit to the award recipient the earned reimbursement of related educational expenses specified in subsection (3) of this section

**Section 3. Milestone Achievement Award.** (1) The scholarship recipient shall present to the professional development counselor and to the participating early childhood facility ~~no[not]~~ later than sixty (60) days following completion of the academic term evidence of earning the ECDA-approved early childhood development credential or degree to be eligible to receive a milestone achievement award. Milestone achievement award reimbursement shall be provided only to the extent funds are available.

(2) Evidence of earning the ECDA-approved early childhood development credential or associate or bachelor's degree shall be:

(a) The certificate for the Commonwealth Child Care Credential, the Child Development Associate Credential, or the Kentucky Early Childhood Development Director's Credential;~~[The certificate for the child development associate's credential];~~ or

(b) The diploma or official transcript from the participating educational institution for an ECDA-approved early childhood associate or bachelor's degree. ~~[development credential other than a child development associate's credential]~~

(3) The milestone achievement award amount shall be:

(a) \$100 for earning the Commonwealth Child Care Credential ~~[ECDA initial credential]~~ in an early childhood development program approved by the ECDA;

(b) \$250 for earning an initial~~[a]~~ child development associate's credential;

(c) \$300 for earning an initial associate degree in early childhood education or other program approved by the ECDA, or the Kentucky Early Childhood Development Director's Credential ~~[Certificate]~~; or

(d) \$500 for earning an initial ~~[a]~~ baccalaureate degree in interdisciplinary early childhood education or other program approved by the ECDA.

(4) The professional development counselor, ~~no[not]~~ later than thirty (30) days after considering whether the scholarship recipient is eligible to receive a milestone achievement award shall notify the scholarship recipient in writing of the determination of eligibility for the milestone achievement award and the amount of the award.

(5)(a) No later than fifteen (15) days following receipt of the document specified in subsection (2) of this section, the participating early childhood facility that employs the scholarship recipient at the time the scholarship recipient earns the ECDA-approved early childhood ~~[development]~~ credential or degree shall remit to the scholarship recipient by ~~[certified]~~ check ten (10) percent of the earned milestone achievement award specified in subsection (3) of this section.

(b) The participating early childhood facility shall send to the professional development counselor a copy of the check as evidence that the participating early childhood facility has paid the scholarship recipient in accordance with paragraph (a) of this subsection.

(6)(a) After determination of eligibility and evidence of payment by the participating early childhood facility of the milestone achievement award, the professional development counselor shall transmit to the Department for Community Based Services in the Division of Child Care of the Cabinet for Health and Family Services~~[Families and Children]~~ a list of eligible recipients of the milestone achievement award. The list shall indicate:

1. The name, home address, and Social Security number of

the award recipient; and

2. The amount of the milestone achievement award earned by the recipient

(b) The Cabinet for Health and Family Services~~[Families and Children]~~ shall remit to the award recipient ninety (90) percent of the earned milestone achievement award specified in subsection (3) of this section.

DR. SARAH LAWS, Chair

APPROVED BY AGENCY: November 29, 2007

FILED WITH LRC: December 13, 2007 at 2 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on Tuesday, January 22, 2008, at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes the system of monetary incentives and expense reimbursement for the Early Childhood Development Scholarship program as authorized by KRS 164.518(3).

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to set forth the system of monetary incentives and expense reimbursement for the Early Childhood Development Scholarship program.

(c) How this administrative regulation conforms to the content of the authorizing statutes. KRS 164.518(3) requires the authority to promulgate administrative regulations pertaining to the Early Childhood Development Scholarship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the system of monetary incentives and expense reimbursement for the Early Childhood Development Scholarship program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by providing that reimbursement for "related educational expenses" for scholarship recipients and reimbursement for the "milestone achievement award" to the employer will only be provided to the extent funds are available. Additionally, the amendment extends the availability of reimbursement for "related educational expenses" to those recipients who are pursuing an associate or bachelor's degree approved by the Early Childhood Development Authority. Further, the amendment will update the name of the "Cabinet for Families and Children" to its current title "Cabinet for Health and Family Services". Additionally, the amendment revises the tiered system of monetary incentives available for those recipients who earn the following credentials or degrees: a Commonwealth Child Care Credential, an initial child development associate's credential, an initial associate degree, the Kentucky Early Childhood Development Director's Credential, or a bachelor's de-

gree in an Early Childhood Development Authority-approved program.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to implement changes with respect to the system of monetary incentives and expense reimbursement for the Early Childhood Development Scholarship program. Additionally, the amendment is necessary to make the references in the regulation to the "Cabinet for Families and Children" accurate by changing the name of that entity to the "Cabinet for Health and Family Services".

(c) How the amendment conforms to the content of the authorizing statutes: The Authority is required to promulgate regulations pertaining to the Early Childhood Development Scholarship program. The amendment to this administrative regulation conforms to the content of the authorizing statutes by revising the system of monetary incentives and expense reimbursement for the Early Childhood Development Scholarship program. Additionally, the amendment is conforms to the statutes by updating the references in the regulation to the "Cabinet for Families and Children" accurate by changing the name of that entity to the "Cabinet for Health and Family Services". (d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by updating the system of monetary incentives and expense reimbursement with respect to the Early Childhood Development Scholarship program. Additionally, the amendment will assist in the effective administration of the statutes by updating the references in the regulation to the "Cabinet for Families and Children" accurate by changing the name of that entity to the "Cabinet for Health and Family Services".

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Scholarship recipients who are eligible for reimbursement of educational related expenses and those pursuing associate and bachelor's degrees could be affected by the amendment. Additionally, employers who are eligible to receive reimbursement for providing the milestone achievement award could be affected by the changes.

(4) Provide an analysis of how the entities identified in (3) above will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: No actions are required of the impacted students or employers in compliance with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be required of the students or employers impacted by this regulation in compliance therewith.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Recipients who are eligible for reimbursement of expenses under this program will receive reimbursement to the extent funds are available. Employers who are eligible for reimbursement of milestone achievement awards made to their eligible employee-recipients will receive reimbursement to the extent funds are available.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the Early Childhood Development Scholarship Program is provided by appropriations from the Tobacco Settlement Fund. The authority does retain some of the funds for the costs associated in administering the Early Childhood Development Scholarship Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary. No increase in fees or funding will be necessary to amend this administrative regulation.

essayry to amend this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

#### FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.518(3), 164.748(4).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

#### ATTORNEY GENERAL Prosecutors Advisory Council Asset Forfeiture (Amendment)

#### 40 KAR 4:010. Disbursement of asset forfeiture receipts.

RELATES TO: KRS 218A.420(4) [218A.435(7)(a)]

STATUTORY AUTHORITY: KRS 218A.420(5) [218A.435(8)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.420(4)(b) provides that a portion of the proceeds from the sale of property forfeited under KRS Chapter 218A shall be paid to the Prosecutors Advisory Council for deposit on behalf of the Commonwealth's Attorney or County Attorney participating in the forfeiture. This administrative regulation establishes the procedure for payment of these moneys and the specific purposes for which these funds shall be expended. [218A.435(7)(a) provides that a portion of the asset forfeiture trust fund shall be allocated to the United-Prosecutorial System to be disbursed by the Attorney General (through the Prosecutors Advisory Council) to Commonwealth's attorneys or county attorneys. This administrative regulation establishes the application mechanism.]

Section 1. Definitions. (1) "Asset forfeiture moneys" means the portion of the proceeds from the sale of property forfeited under KRS Chapter 218A which is paid to the Prosecutor's Advisory

Council and deposited on behalf of the Commonwealth's Attorney or County Attorney whose office participated in the forfeiture as provided under KRS 218A.420(4)(b).

(2) "National Code of Professional Conduct for Asset Forfeiture" means the National Code of Professional Conduct for Asset Forfeiture attached as Appendix G to the United States Department of Justice's Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement (March 1994) (GPO Ref No. 1994-301-175/14299).

**Section 2. Submission of Asset Forfeiture Moneys** (1) Asset forfeiture moneys paid to a Commonwealth's or County Attorney shall be forwarded by the Commonwealth's or County Attorney to the Prosecutors Advisory Council, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204.

(2) Any asset forfeiture check forwarded to the Prosecutor's Advisory Council shall be accompanied by the following:

- (a) A copy of the final order of forfeiture; and
- (b) A completed "Submission of Asset Forfeiture Moneys," which is incorporated by reference.

(3) Any asset forfeiture moneys submitted to the Prosecutors Advisory Council without the foregoing shall be returned to the Commonwealth's or County Attorney within two (2) weeks.

**Section 3. Application.** Commonwealth's Attorneys or County Attorneys having asset forfeiture moneys on deposit with the Prosecutors Advisory Council and entitled to expend those monies under KRS 218A.420(4)(b) [Commonwealth's attorneys or county attorneys who are entitled to payment under KRS 218A.435(7)(a)] shall apply in writing for payment of asset forfeiture proceeds by completing the "Application for Expenditure of Asset Forfeiture Funds," which is incorporated by reference, and submitting it to [from the trust fund through] the Office of Attorney General, Prosecutors Advisory Council.

**Section 4. Use of Asset Forfeiture Moneys.** (1) All asset forfeiture moneys paid to a Commonwealth's Attorney or County Attorney shall be expended for legitimate law enforcement purposes, including but not limited to the following purposes:

- (a) Operating expenses directly relating to protracted, extraordinary or complex prosecution of crimes;
- (b) Payment for forensic and other scientific testing of evidence related to criminal prosecution;
- (c) The purchase of technical or computer equipment, including telecommunication systems or devices, or expertise related to criminal prosecution, provided that any usage not directly related to criminal prosecution shall be prorated and shall not be paid with any funds allocated by the Prosecutors Advisory Council;
- (d) Expenses associated with the conduct of grand jury proceedings;

(e) Payment for continuing legal education and other training relating to criminal justice, including reimbursement for reasonable travel and lodging to attend trainings;

(f) Dues or subscriptions to newspapers, magazines, publications and organizations providing support services to Commonwealth's and county attorneys, including but not limited to the Kentucky Bar Association, the National District Attorneys Association, the National Association of Prosecutor Coordinators, the American Prosecutors Research Institute, the Kentucky Association of Counties, the Kentucky Commonwealth's Attorneys Association, the Kentucky County Attorney's Association and the Fraternal Order of Police;

(g) De minimus expenses for refreshments furnished to employees, victims, other witnesses and visitors at the office of the Commonwealth's or County Attorney, which are provided as a convenience in the exercise of the prosecution of crimes; and

(h) Programs, communications and advertising, including apparel identifying the office of the Commonwealth's or County Attorney, which relates to education, crime prevention and prosecution.

(2) Asset forfeiture moneys provided pursuant to KRS 218A.420(4) shall not be used for the following expenditures:

- (a) Civic memberships or charitable contributions unrelated to a legitimate law enforcement purpose;
- (b) Payment for personal political advertising or other communi-

cations, including items bearing the name, likeness, or logo depicting the candidacy of any person;

(c) Payment for airfare for any class of ticket other than coach or economy;

(d) Personal loans or any payment that would bestow a personal pecuniary benefit unrelated to a legitimate law enforcement purpose;

(e) The purchase of alcoholic beverages;

(f) Expenses for interior decorating, including pictures, art, and holiday decorations unrelated to a legitimate law enforcement purpose;

(g) Expenses for private communications or gifts related birth-days, funerals, or other special events; and

(h) Expenses for personal apparel, including t-shirts, sweatshirts, hats, weather gear, or identifying buttons or badges unrelated to a legitimate law enforcement purpose.

(3) Pursuant to KRS 218A.420(4), asset forfeiture moneys are supplementary and shall not be used to defray or otherwise replace the ordinary operating expenses of the Commonwealth's or county attorney to whom the moneys are paid. Further, the moneys paid pursuant to KRS 218A.420(4) are for the use of Commonwealth's and County Attorneys and shall not supplant the funds available for other criminal justice agencies.

(4) Consistent with the National Code of Professional Conduct for Asset Forfeiture, which is incorporated by reference, the following ethical prohibitions shall be applied to the expenditure of asset forfeiture moneys:

(a) The potential revenue from asset forfeiture moneys shall not be permitted to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of an ongoing investigation, or the due process rights of citizens; and

(b) Neither the employment nor salary of any employee of the unified prosecutorial system shall be made to depend upon either the level of seizures or the amount of asset forfeiture moneys he or she achieves.

[Section 2. When applying, a copy of the final order of forfeiture shall be forwarded to the Office of the Attorney General, Prosecutors Advisory Council, 909 Leewood Drive, Frankfort, Kentucky 40601.]

**Section 3.** Subject to applicable statutes county and Commonwealth's attorneys shall expend money allocated from the fund for personnel, operating, equipment, training and education programs related to criminal justice.]

**Section 5. [4.]** Property purchased with money allocated from the fund shall be deemed property of the Commonwealth of Kentucky.

**Section 6. Incorporation by Reference.** (1) The following material is incorporated by reference:

- (a) "Submission of Asset Forfeiture Moneys", December 2007;
- (b) "Application for Expenditure of Asset Forfeiture Funds", December 2007; and

(c) "National Code of Professional Conduct for Asset Forfeiture, United States GPO 1994"

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Prosecutors Advisory Council, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204, Monday through Friday, 8 a.m. to 4:30 p.m.

GREGORY D. STUMBO, Attorney General

APPROVED BY AGENCY: December 14, 2007

FILED WITH LRC: December 14, 2007 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on January 23, 2008, at 9 a.m. at the offices of the Prosecutors Advisory Council, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204. Individuals interested in being heard at this hearing shall notify this agency in writing by January 15, 2008, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person

who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Janet M. Graham, Executive Director, Prosecutors Advisory Council, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204, phone (502) 696-5300, fax (502) 696-5532.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Janet M. Graham, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the regulatory provisions regarding the disbursement of asset forfeiture moneys to Commonwealth's and County Attorneys in the manner and for the purposes provided under KRS 218A.420.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the manner in which asset forfeiture moneys are submitted and maintained for Commonwealth's and County Attorneys and to provide the allowable purposes for which asset forfeiture moneys may be spent as required under KRS 218A.420.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation requires asset forfeiture funds paid to Commonwealth's and County Attorneys to be paid to the Prosecutors Advisory Council, Office of the Attorney General for use by the Commonwealth's or County Attorney participating in the forfeiture proceeding as required under KRS 218A.420(4)(b). This administrative regulation establishes the specific purposes for which asset forfeiture moneys may be spent by Commonwealth's and County Attorneys as provided under KRS 218A.420(5).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See response to (1)(c).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to the administrative regulation will reflect the 2007 legislative changes to KRS 218A.420, and will provide the specific purposes for which asset forfeiture moneys may be spent.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary because of the 2007 legislative changes to KRS 218A.420.

(c) How the amendment conforms to the content of the authorizing statutes: See response to (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See response to (1)(c).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Commonwealth's and County Attorneys in Kentucky will be affected by the amendment to this administrative regulation. The Prosecutors Advisory Council will be affected by the amendment to this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Commonwealth's and County Attorneys will complete new forms to submit asset forfeiture moneys and to apply to expend asset forfeiture funds.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs are anticipated for the Common-

wealth's and County Attorneys to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to the administrative regulation will provide guidance to the Commonwealth's and County Attorneys regarding the specific purposes for which asset forfeiture moneys may be expended. The administrative regulation will also provide the necessary forms for the submission of asset forfeiture moneys and the application for the expenditure of asset forfeiture moneys.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional costs are anticipated to implement this administrative regulation. Forms will be provided in an electronic format online.

(b) On a continuing basis: No additional costs are anticipated to implement this administrative regulation. Forms will be provided in an electronic format online.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Attorney General's budget for the Prosecutors Advisory Council will provide the source of funding. No additional costs are anticipated.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary to implement the change to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not establish any fees or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied in this regulation since the statute, KRS 218A.420, applies no tiering, establishing the same requirements for all Commonwealth's and County Attorneys.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the regulation

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### PERSONNEL CABINET Office of the Secretary (Amendment)

101 KAR 2:210. Summary plan descriptions for the Public Employee Health Insurance Program.

RELATES TO KRS 18A.030, 18A.225, 18A.2254



STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a) requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the summary plan descriptions for public employees covered under the self-insured plan. This administrative regulation incorporates by reference eleven (11) summary plan descriptions distributed to members of the Public Employee Health Insurance Program providing specific information on plan coverage, exclusions, and appeal rights.

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference

- (a) "Commonwealth of Kentucky, "Commonwealth" Essential Summary Plan Description", January 1, 2008 [2007], edition;
- (b) "Commonwealth of Kentucky, "Commonwealth" Enhanced Summary Plan Description", January 1, 2008 [2007], edition;
- (c) "Commonwealth of Kentucky, "Commonwealth" Prescription Drug Summary Plan Description, Commonwealth Select", January 1, 2008 [2007], edition;
- (d) "Commonwealth of Kentucky, "Commonwealth" Premier Summary Plan Description", January 1, 2008 [2007], edition;
- (e) "Commonwealth of Kentucky, Select Summary Plan Description", January 1, 2008 [2007], edition;
- (f) "Commonwealth of Kentucky, Prescription Drug Summary Plan Description, Commonwealth Essential", January 1, 2008 [2007], edition;
- (g) "Commonwealth of Kentucky, Prescription Drug Summary Plan Description, Commonwealth Enhanced", January 1, 2008 [2007], edition;
- (h) "Commonwealth of Kentucky, Prescription Drug Summary Plan Description, Commonwealth Premier", January 1, 2008 [2007], edition;
- (i) "Summary Plan Description, Commonwealth of Kentucky Health Flexible Spending Account", January 1, 2008 [2007], edition;
- (j) "Summary Plan Description, Commonwealth of Kentucky Dependent Care Flexible "Care" Spending Account", January 1, 2008 [2007], edition; and
- (k) "Summary Plan Description, Commonwealth of Kentucky, Health Reimbursement Account" "Waivers Only", January 1, 2008 [2007], edition.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor [200-Fair-Oaks-Lane, Suite-516], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

Section 3. The provisions in this administrative regulation will become effective January 1, 2008.

BRIAN J. CRALL, Secretary

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: December 7, 2007 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on Friday, January 25, 2008 at 10 a.m. located at 501 High Street, 3rd Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Thomas B. Stephens, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601,

phone (502) 564-7430, fax (502) 564-7603.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Thomas B. Stephens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates summary plan descriptions, by reference, for various health benefit plans offered through the Public Employee Health Insurance Program.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with the statutory mandate of KRS 18A.2254, which requires the Personnel Cabinet to incorporate by reference in an administrative regulation the summary plan descriptions for public employees covered under the Public Employee Health Insurance Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation complies with the statute authorizing the self-insured health benefit plan and the statute mandating the promulgation of the regulation

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute KRS 18A.2254 by incorporating by reference, the summary plan descriptions for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation: This is an amendment. This amendment constitutes a compilation of the health benefit options, eligibility rules, exclusions, and appeal rights for plan year 2008.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect the additional health benefit for the plan year 2008 and the statutory mandate to annually update the regulations incorporating the summary plan descriptions contained in KRS 18A.2254.

(c) How the amendment conforms to the content of the authorizing statutes. This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the summary plan descriptions be incorporated by reference in an administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the content of the statute authorizing the self-insured health benefit plan and KRS 18A.2254, which mandates that the summary plan descriptions be incorporated by reference in an administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Both state and select county and local government entities, including employees of the local school boards and districts, will be affected. Additionally, all eligible employees and participants of the Public Employee Health Insurance Program will be affected by additional health benefit options and changes to the material incorporated by reference in this amended regulation. Specifically, this encompasses approximately 153,000 eligible employees under KRS 18A.225(1)(a) and a total of 242,000 (which would include qualifying beneficiaries and dependents).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required by entities to comply with the incorporation of these provisions as administrative regulations. The 2008 Summary Plan Descriptions will provide notice of the benefits provided to those individuals covered under the Public Employee Health Insurance Program for plan year 2009.



(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Complying with this administrative regulation will not have a cost impact to participants or beneficiaries covered under the Public Employee Health Insurance Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants and dependents covered under the Public Employee Health Insurance Program for plan year 2008 will have identical health insurance coverage benefits as plan year 2007.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not require an increase in funding or fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all participants in the Public Employee Health Insurance Program which includes state government, select local government entities and employees of local school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2257, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287, and Internal Revenue Code Subsections 105, 106, 125, 152 and 213.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, school boards or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, school boards or school districts) for the first year? The administrative regulation will not generate any revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative regulation will not generate any revenues.

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this program on a continuing basis are believed to be consistent with previous plan years. By law an amended administrative regulation will be promulgated in 2009 and each subsequent plan year.

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:056. Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization.

RELATES TO: KRS 314.011(8), 314.042, 314.091, 314.161, 314.470

STATUTORY AUTHORITY: KRS 314.042(7), 314.131(1), 314.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the registration of an advanced registered nurse practitioner. This administrative regulation establishes the requirements for registration, renewal, and reinstatement; programs; and recognition of a national certifying organization.

Section 1. An applicant for registration as an advanced registered nurse practitioner in Kentucky shall: (1) Complete an "Application for Registration as an Advanced Registered Nurse Practitioner" as required by 201 KAR 20:370, Section 1(1);

(2) Provide a copy of a current active Registered Nurse license;

(3) Submit the fee required by 201 KAR 20:240, Section 1(2)(k); and

(4) Comply with the requirements established in KRS 314.042 and Sections 2 and 4 through 10 of this administrative regulation.

Section 2. Postbasic Program of Study and Clinical Experience. (1) An organized postbasic program of study and clinical experience shall conform to the following criteria in order to be acceptable to the board. The program shall:

(a) Be an established, ongoing, and organized program offered on a routine basis to an enrollee;

(b)1. Be accredited or approved for the education of nurses by a recognized accreditation or approval body; or

2. Be sponsored by a sponsoring organization, which shall hold the accreditation or approval for the education of nurses by a recognized accreditation or approval body;

(c) Have a program design which prepares an enrollee to function in a role consistent with the advanced registered nursing practice designation;

(d) Have a program design which includes purpose, philosophy, objectives, curriculum content, and plan to evaluate achievement of objectives and measurement of learning outcomes of students,

(e) Have a designated faculty responsible for planning, development, implementation, and evaluation of curriculum and students;

(f) Include didactic components that prepare the student to perform the additional acts delineated by the board pursuant to KRS 314.011(8) and include at least pharmacology, advanced physical assessment, advanced pathophysiology, and medical management of disease and differential diagnosis,

(g) Include a supervised clinical experience that includes application of all the didactic components; and

(h) Upon successful completion, award a diploma or certificate.

(2)(a) If the applicant for registration as an advanced registered nurse practitioner completed a postbasic program of study after January 1, 2005, the applicant shall hold a master's degree, or doctorate in nursing practice degree, or postmaster's certificate awarding academic credit by a college or university related to the advanced registered nurse practitioner designation.

(b) If the applicant for registration as an advanced registered nurse practitioner completed a postbasic program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to determine if the program is acceptable to the board by sufficiently preparing a student for advanced registered nursing practice.

**Section 3. National Certifying Organizations.** (1) A nationally established organization or agency which certifies registered nurses for advanced nursing practice shall be recognized by the board if it meets the following criteria:

- (a) The certifying body is an established national nursing organization or a subdivision of this type of organization;
- (b) Eligibility requirements for certification are delineated;
- (c) Certification is offered in specialty areas of clinical practice;
- (d) Scope and standards of practice statements are promulgated;
- (e) Mechanism for determining continuing competency is established; and
- (f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

- (a) American Nurses Credentialing Center;
- (b) American College of Nurse-Midwives;
- (c) ACNM Certification Council;
- (d) Council on Certification/Recertification of Nurse Anesthetists;
- (e) Pediatric Nursing Certification Board;
- (f) National Certification Corporation;
- (g) American Academy of Nurse Practitioners;
- (h) American Association of Critical-Care Nurses Certification Association; and
- (i) Oncology Nursing Certification Corporation.

**Section 4. Practice Pending Registration.** (1) An applicant who meets all the requirements for practice as an advanced registered nurse practitioner except for initial certification by a national certifying organization shall be authorized to practice as an advanced registered nurse practitioner subject to the following conditions:

- (a) The applicant shall apply for certification from a recognized national certifying organization for the first time.
- (b) The applicant shall obtain an advanced registered nurse practitioner in the same specialty, or a licensed physician, to supervise the applicant. For the purposes of this paragraph:

1. Supervision shall include, at a minimum, periodic observation and evaluation of the applicant's practice to validate that the practice has been performed according to established standards; and

2. The supervisor shall be immediately available either on site or by telephone.

(c) The applicant shall verify to the board that he has applied for certification and has obtained a supervisor.

(d) Practice pursuant to this subsection shall extend until the applicant has learned the results of the request for certification.

(e) An applicant who has previously applied for and been denied certification by a recognized national certifying organization shall be ineligible to practice as an advanced registered nurse practitioner until he has been certified.

(2) A registered nurse who meets all the requirements for practice as an advanced registered nurse practitioner, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20.110 pending licensure by endorsement, shall be authorized to practice as an advanced registered nurse practitioner for a period of time not to exceed the expiration date of the temporary work permit.

(3) Authorization to practice pursuant to subsections (1) or (2) of this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(4) An individual authorized to practice pursuant to subsection (1) of this section may use the title "ARNP Applicant" or "ARNP App.".

**Section 5. Registration Renewal.** (1) The advanced registered nurse practitioner registration shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of registration as an advanced registered nurse practitioner, the applicant shall:

(a) Renew the registered nurse license or privilege on an active status;

(b) Submit a completed "ARNP Registration Renewal Application" form as required by 201 KAR 20.370, Section 1(1);

(c) Submit the current renewal application fee, as established in 201 KAR 20.240, Section 1(2)(l); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced registered nurse practitioner who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced registered nurse practitioner until:

(a) A current active license has been issued by the board or a privilege is recognized by the board; and

(b) The advanced registered nurse practitioner registration has been reinstated.

**Section 6. Registration Reinstatement.** (1) If a nurse fails to renew the advanced registered nurse practitioner registration as prescribed by applicable law and administrative regulation, the registration shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of advanced registered nurse practitioner registration, the applicant shall:

(a) Submit a completed "Application for Registration as an Advanced Registered Nurse Practitioner" form as required by 201 KAR 20.370, Section 1(1);

(b) Submit the current reinstatement application fee, as established in 201 KAR 20.240, Section 1(2)(m); and

(c) Maintain current certification by a recognized national certifying organization.

**Section 7. Certification or Recertification.** (1)(a) An advanced registered nurse practitioner shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the registration period.

(b) The board shall conduct an audit to verify that an advanced registered nurse practitioner has met the requirements of subsection (1)(a) of this section.

(2) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced registered nurse practitioner until the requirements of Sections 1 through 8 of this administrative regulation have been met.

(3) An advanced registered nurse practitioner who is decertified by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced registered nurse practitioner during the period of decertification.

**Section 8.** (1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

**Section 9.** The requirements of Sections 1 through 11 of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) A postbasic educational program for preparation for advanced registered nursing practice; or

(2) An advanced registered nurse practitioner refresher course.

**Section 10.** A registered nurse who holds himself out as a clinical specialist or is known as a clinical specialist shall be required to register as an advanced registered nurse practitioner if his practice includes the performance of advanced registered nursing procedures.

**Section 11.** A nurse practicing as an advanced registered nurse practitioner who is not registered as an advanced registered nurse practitioner by the board, an advanced registered nurse practitioner whose practice is inconsistent with the specialty to which he has been designated, or an advanced registered nurse

practitioner who does not recertify and continues to practice as an advanced registered nurse practitioner shall be subject to the disciplinary procedures set in KRS 314.091.

JIMMY ISENBERG, President

APPROVED BY AGENCY: October 25, 2007

FILED WITH LRC: November 29, 2007 at 11 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on January 22, 2008, at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Nathan Goldman, General Counsel, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets registration requirements for ARNPs.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: It recognizes the new Doctorate of Nursing Practice (DNP) degree for ARNPs.

(b) The necessity of the amendment to this administrative regulation: Schools of nursing are instituting the DNP degree in place of the Master's degree.

(c) How the amendment conforms to the content of the authorizing statutes: By setting appropriate requirements.

(d) How the amendment will assist in the effective administration of the statutes: By setting appropriate requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DNP graduates, number unknown.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to meet the requirements for registration as an ARNP.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost associated with this change.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): DNP graduates will be qualified to apply for registration as ARNPs.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.042 and 314.131.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Some additional revenue may be generated for the Board through additional registration fees from DNP graduates. The amount is impossible to estimate.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Some additional revenue may be generated for the Board through additional registration fees from DNP graduates. The amount is impossible to estimate.

(c) How much will it cost to administer this program for the first year? This amendment will not require additional costs to administer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require additional costs to administer.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:057. Scope and standards of practice of advanced registered nurse practitioners.

RELATES TO: KRS 314.011(7), 314.042, 314.193(2)

STATUTORY AUTHORITY: KRS 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced registered nursing practice to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an

advanced registered nurse practitioner.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced registered nurse practitioner and a physician in the provision of prescription medication and includes both autonomous and cooperative decision-making, with the advanced registered nurse practitioner and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Registered Nurse Practitioner's Prescriptive Authority for Non-scheduled Legend Drugs (CAPA-NS)" means the written document pursuant to KRS 314.042(8).

(3) "Collaborative Agreement for the Advanced Registered Nurse Practitioner's Prescriptive Authority for Controlled Substances (CAPA-CS)" means the written document pursuant to KRS 314.042(9).

Section 2. The practice of the advanced registered nurse practitioner shall be in accordance with the standards and functions defined in the following scope and standards of practice statements for each specialty area:

(1) Scope and Standards of Psychiatric-Mental Health Nursing Practice;

(2) Nursing: Scope and Standards of Practice[~~Advanced Practice Registered Nursing~~];

(3) Scope and Standards for Nurse Anesthesia Practice;

(4) Standards for Office-based Anesthesia Practice;

(5) Standards for the Practice of Midwifery;

(6) The Women's Health Nurse Practitioner: Guidelines for Practice and Education;

(7) Scope and Standards of Practice: Pediatric Nurse Practitioner;

(8) Standards of Practice for Nurse Practitioners;

(9) Scope of Practice for Nurse Practitioners;

(10) Standards of Clinical Practice and Scope of Practice for the Acute Care Nurse Practitioner;

(11) Neonatal Nursing: Scope and Standards of Practice;

(12) Scope of Practice and Standards of Professional Performance for the Acute and Critical Care Clinical Nurse Specialist; and

(13) Statement on the Scope and Standards of Advanced Practice Nursing in Oncology.

Section 3. In the performance of advanced registered nursing practice, the advanced registered nurse practitioner shall seek consultation or referral in those situations outside the advanced registered nurse practitioner's scope of practice.

Section 4. Advanced registered nursing practice shall include prescribing medications and ordering treatments, devices, and diagnostic tests which are consistent with the scope and standard of practice of the advanced registered nurse practitioner.

Section 5. Advanced registered nursing practice shall not preclude the practice by the advanced registered nurse practitioner of registered nursing practice as defined in KRS 314.011(5).

Section 6. (1) A CAPA-NS shall include the name, address, phone number, and license or registration number of both the advanced registered nurse practitioner and each physician who is a party to the agreement. It shall also include the specialty area of practice of the advanced registered nurse practitioner. An advanced registered nurse practitioner shall, upon request, furnish to the board or its staff, a copy of the CAPA-NS.

(2) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(9)(a), the ARNP shall file with the board the "Notification of a Collaborative Agreement for the Advanced Registered Nurse Practitioner's Prescriptive Authority for Controlled Substances (CAPA-CS)".

(3) For purposes of the CAPA-CS, in determining whether the ARNP and the collaborating physician are qualified in the same or a similar specialty, the board shall be guided by the facts of each particular situation and the scope of the ARNP's and the physician's actual practice.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS[~~written collaborative practice agreement~~] shall constitute a violation of KRS 314.091(1).

Section 8. The board may make an unannounced monitoring visit to an advanced registered nurse practitioner to determine if the advanced registered nurse practitioner's practice is consistent with the requirements established by 201 KAR Chapter 20.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Scope and Standards of Psychiatric-Mental Health Nursing Practice", 2000 Edition, American Nurses' Association;

(b) "Nursing: Scope and Standards of Practice[~~Advanced Practice Registered Nursing~~]", 2004[1996] Edition, American Nurses' Association;

(c) "Standards for Office-based Anesthesia Practice", 2002 Edition, American Association of Nurse Anesthetists;

(d) "Scope and Standards for Nurse Anesthesia Practice", 2002 Edition, American Association of Nurse Anesthetists;

(e) "Standards for the Practice of Midwifery", 2003 Edition, American College of Nurse-midwives;

(f) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2002 Edition, Association of Women's Health, Obstetric and Neonatal Nurses and National Association of Nurse Practitioners in Women's Health;

(g) "Scope and Standards of Practice: Pediatric Nurse Practitioner", 2004 Edition, National Association of Pediatric Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2006[2002] Edition, American Academy of Nurse Practitioners;

(i) "Scope of Practice for Nurse Practitioners", 2006[2002] Edition, American Academy of Nurse Practitioners;

(j) "Standards of Clinical Practice and Scope of Practice for the Acute Care Nurse Practitioner", 1995 Edition, American Nurses' Association/American Association of Critical Care Nurses;

(k) "Neonatal Nursing: Scope and Standards of Practice", 2004 Edition, American Nurses Association/National Association of Neonatal Nurses;

(l) "Scope of Practice and Standards of Professional Performance for the Acute and Critical Care Clinical Nurse Specialist", 2002 Edition, American Association of Critical-Care Nurses; and

(m) "Statement on the Scope and Standards of Advanced Practice Nursing in Oncology", 2003 Edition, Oncology Nursing Society.

(n) "Notification of a Collaborative Agreement for the Advanced Registered Nurse Practitioner's Prescriptive Authority for Controlled Substances (CAPA-CS)", 8/2006, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

JIMMY ISENBERG, President

APPROVED BY AGENCY: October 25, 2007

FILED WITH LRC: November 29, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2008, at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed

administrative regulation to the contact person.

**CONTACT PERSON:** Nathan Goldman, General Counsel, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Contact Person:** Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets scope and standards of practice for ARNPs.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting scope and standards of practice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting scope and standards of practice.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: It updates several scope and standards of practice statements. It also corrects a reference to the collaborative agreements that were changed by legislation in 2006.

(b) The necessity of the amendment to this administrative regulation: Several scope and standards of practice statements have been revised.

(c) How the amendment conforms to the content of the authorizing statutes: By setting appropriate requirements.

(d) How the amendment will assist in the effective administration of the statutes: By setting current scopes and standards of practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: ARNPs. There are currently approximately 3,300.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to comply with the new scope and standards of practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost associated with this change.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be practicing properly.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? The Kentucky Board of Nursing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.042 and 314.131.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? This amendment will not require additional costs to administer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require additional costs to administer.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:220. Nursing continuing education provider approval.

RELATES TO: KRS 314.011(12), 314.073, 314.131(1), (2)

STATUTORY AUTHORITY: KRS 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(2) and 314.073(3) require the board to establish continuing competency requirements and approve providers of continuing education. This administrative regulation establishes requirements for providers of continuing education.

Section 1. (1) A provider applicant shall submit an:

(a) "Application for Provider Approval"; and

(b) Application fee as set forth in 201 KAR 20:240.

(2) If an application is approved, the board shall issue a provider number to the applicant.

(3) Provider approval shall initially expire on December 31 of the second year following initial approval.

(4) On or before September 30 of the year in which an approval period expires, an approved provider shall submit the:

(a) "Application for Provider Renewal"; and

(b) Fee as set forth in 201 KAR 20:240.

(5) Renewal shall be for five (5) years.

(6) A provider applicant may establish compliance by submitting evidence of approval by one (1) of the following organizations:

(a) American Academy of Nurse Practitioners;

(b) American Association of Critical Care Nurses;

(c) American Association of Nurse Anesthetists;

(d) American College of Nurse Midwives;

(e) American Nurses Credentialing Center;

(f) Association of Women's Health, Obstetrical and Neonatal Nurses;

(g) National Association of Nursing Practitioners in Women's Health;

(h) National Association Pediatric Nurses Associates and Practitioners;

(i) National Association for Practical Nurses Education and Service;

(j) National Federation of Licensed Practical Nurses;

- (k) National League for Nursing; and
- (l) State Boards of Nursing.

(7)(a) An organization that approves nursing continuing education may request that it be added to this administrative regulation.

(b) An organization shall be included in this administrative regulation if the board determines that its standards are comparable to the standards established by the provisions of this administrative regulation.

(8) Continuing education earned from a provider that is recognized by an organization listed in subsection (6) of this section for an advanced registered nurse practitioner may be utilized for the pharmacology requirement of 201 KAR 20 215, Section 5(2).

Section 2. (1) The board may review a provider's continuing education activities or approval status at any time.

(2) Except as provided in subsection (3) of this section, if after a review of a provider it is determined that the provider does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny or limit the provider's approval status.

(3) If after a review of a continuing education activity it is determined that the activity does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny approval status for subsequent offerings of that specific continuing education activity.

(4)(a) A request for a hearing before the board shall be filed within ten (10) days of receipt of the board's notice.

(b) If a provider fails to submit a request for a hearing within the time specified in paragraph (a) of this subsection, the board shall implement the action proposed in its notice.

Section 3. Providers shall comply with the following standards:

(1)(a) A nurse who meets the qualifications established in paragraph (b) of this subsection shall be administratively responsible for continuing education activities, including:

1. Planning;
2. Development,
3. Implementation; and
4. Evaluation.

(b) A nurse administrator shall:

1. Hold a current active license;
2. Have experience in adult and continuing education; and
3. Hold a baccalaureate or higher degree, in nursing.

(c) The nurse administrator of continuing education for licensed practical nursing groups shall hold a diploma, or its equivalent, from an approved school of practical nursing.

(2) Organized learning activities shall be based upon systematic needs assessment, and shall support quality continuing education that:

(a) Enhances the quality, safety and effectiveness of care provided by nurses; and

(b) Contributes directly to the competence of a nurse.

(3) The content of nursing continuing education shall be designed to

(a) Present current theoretical knowledge to enhance and expand nursing skills; and

(b) Promote the development, or change in attitudes, necessary to make competent judgments and decisions in nursing.

(4) Objectives for continuing education activities shall be:

- (a) Related to nursing practice and interventions;
- (b) Stated in clearly defined expected learner outcomes; and
- (c) Consistent with needs assessment data.

(5) The continuing education activity shall reflect cooperative planning between the nurse administrator, faculty and content experts.

(6) The content for each educational activity shall include and be documented in provider files as follows:

(a) An agenda indicating a presentation schedule, presenters, topics, meals, breaks.

(b) Topical outline, teaching methods, and corresponding time frames sufficient to support relevance and value of the educational activity to safe, effective nursing practice

(7) Teaching methods shall be consistent with the content and learning objectives, and shall reflect the use of adult learning principles.

principles.

(8) Faculty for continuing education activities shall demonstrate content knowledge and expertise

(9) The name, title and credentials identifying the educational and professional qualifications for each faculty member shall be retained in the provider offering files.

(10) Resources allocated for the continuing education activity shall be adequate in terms of education unit organization, with fiscal support for adequate staff, facilities, equipment and supplies to ensure quality teaching-learning in a comfortable environment that is accessible to the target audience.

(11) Participants shall be provided with essential information for review prior to registration. This information shall include:

- (a) Learning objectives;
- (b) Content overview;
- (c) Date, time, and presentation schedule;
- (d) Presenter;
- (e) Number of contact hours;
- (f) Fee and refund policy; and
- (g) Requirements for successful completion.

(12) Published information about continuing education activities offered by providers approved by the board shall include the:

- (a) Provider number; and
- (b) Following statement: "Kentucky Board of Nursing approval of an individual nursing continuing education provider does not constitute endorsement of program content."

(13) A provider shall notify the board in writing within one (1) month of any changes in its administration, such as nurse administrator, mailing address, telephone number or other relevant information.

(14) A provider shall designate and publish the number of hours of any portion of an offering dedicated to pharmacology.

(15) Records of continuing education activities shall be maintained for a period of five (5) years, including the following:

- (a) Title, date and site of the activity;
- (b) Name of the person responsible for coordinating and implementing the activity;
- (c) Purpose, documentation of planning committee activities, learner objectives, content outline, faculty, teaching and evaluation methods;

(d) Participant roster, with a minimum of:

1. Name; and
2. Social Security number or license number;
- (e) Summary of participant evaluations;
- (f) Number of continuing education contact hours awarded;
- (g) Master copy of certificate awarded.

(16) Participants shall receive a certificate of attendance that documents participation with the following:

- (a) Name of participant;
- (b) Offering title, date and location;
- (c) KBN's provider's name, address, telephone number, approval number and expiration date;
- (d) Name and signature of authorized provider representative;
- (e) Number of continuing education contact hours awarded.

(17) There shall be a clearly defined method for evaluating the continuing education activity which includes the following:

(a) An evaluation tool that includes participant appraisal of achievement of each learning objective; teaching effectiveness of each presenter; relevance of content to stated objectives; effectiveness of teaching methods; and appropriateness of physical facilities.

(b) A mechanism for periodic, systematic evaluation of the provider's total program of educational activities.

(18) An action plan with time lines for resolution of identified deficiencies shall be maintained.

(19) The provider shall have current policies and procedures for the management of the providership that demonstrate compliance with the required standards.

(20) The continuing education providership shall be a recognizable function within the sponsoring organization.

Section 4. (1) The following forms are incorporated by reference:

- (a) "Application for Provider Approval", 6/2005, Kentucky



Board of Nursing:

(b) "Application for Provider Renewal", 6/2005, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

JIMMY ISENBERG, President

APPROVED BY AGENCY: October 25, 2007

FILED WITH LRC: November 29, 2007 at 11 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on January 22, 2008, at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Nathan Goldman, General Counsel, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets requirements for approval of continuing education (CE) providers.

(b) The necessity of this administrative regulation. The Board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. By setting requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: It updates several scope and standards of practice statements. It recognizes additional CE providers for ARNP pharmacology CE.

(b) The necessity of the amendment to this administrative regulation: Additional appropriate CE providers for ARNP pharmacology CE exist and need to be recognized.

(c) How the amendment conforms to the content of the authorizing statutes: The additional CE providers being recognized meet the standards imposed by this administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: By recognizing additional CE providers for ARNP pharmacology CE.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: ARNPs. There are currently approximately 3300.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost associated with this

change

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be practicing properly.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.073 and 314.131.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? This amendment will not require additional costs to administer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require additional costs to administer.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:270. Programs of nursing site visits [surveys].

RELATES TO. KRS 314.111[(2), (3), 314.131(4)]

STATUTORY AUTHORITY: KRS [Chapter] 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: It is necessary that site visits [surveys] be made by a board representative to evaluate compliance with board standards by agencies offering or planning to offer programs of nursing

Section 1. Types of site visits. (1) A facility visit is made to a program of nursing for the sole purpose of determining if the physical facility meets requirements as set by the board's administrative

regulations.

(2) An evaluative visit is made to a program of nursing for the purpose of evaluating a program's progress and approval status.

(3) A follow-up visit is made to a program of nursing to verify that actions requested by the board have been implemented as stated.

(4) A consultative visit is made to a program of nursing at the request of the program or governing institution. The requesting entity shall submit in writing specific objectives for the visit prior to the visit.

Section 2. Evaluation of a program of nursing by a national nursing accrediting body.

(1) The board may accept accreditation by a national nursing accrediting body recognized by the United States Department of Education as evidence of compliance with the standards set by the administrative regulations of the board. The program of nursing shall submit to the board a copy of the self-evaluation report submitted to the national nursing accrediting body.

(2) A program of nursing that seeks accreditation from a national nursing accrediting body shall submit evidence of that accreditation to the board within thirty (30) days of receiving the report from the national nursing accrediting body. The program of nursing shall submit notice of any change in its accreditation to the board within thirty (30) days of receipt of the notice from the national nursing accrediting body. Failure to submit notice of accreditation results within thirty (30) days may result in a site visit.

(3) A program of nursing that has been granted approval based on a national nursing accrediting body's accreditation shall comply with 201 KAR 20:260 through 20:360.

(4) The program administrator shall submit to the board any report from the national nursing accrediting body citing deficiencies or recommendations at the time the report is received by the program of nursing.

(5) The program of nursing shall submit copies of interim reports requested by the national nursing accrediting body to the board.

(6) If the program of nursing receives notice from the national nursing accrediting body addressing interim reports, a copy of all communication shall be sent to the board within thirty (30) days of receiving the report.

(7) If the program of nursing is accredited for less than the maximum accreditation period, the program shall provide the board with a copy of the report addressing the items of noncompliance within thirty (30) days of receipt from the national nursing accrediting body. The board may require additional reports regarding non-compliance.

(8) The board may grant full approval for a period of time not to exceed the approval period of the national nursing accrediting body.

Section 3. [Surveys of] Programs of Nursing Site Visits. (1) Programs of nursing not accredited by a national nursing accrediting body shall [granted full approval status by the board will] be subject to a site visit [surveyed] at least every eight (8) years.

(2) A site visit date shall be established in collaboration with the program of nursing. A specific list of information required for review shall be sent to the program of nursing prior to the site visit.

(3) Prior to the site visit, the program of nursing shall submit a self-evaluation report that provides evidence of compliance with the standards set forth in 201 KAR 20:260 through 360.

(4) Site visits to [Surveys of] programs of nursing holding full approval status may be scheduled [rescheduled] based upon any of the following:

(a) A complaint received from faculty, students, or the general public relating to a violation of 201 KAR 20:260 through 360 [Length of time since previous survey by a board representative].

(b) Denial, withdrawal, or change in the program accreditation status by a national nursing accrediting body or a general academic accrediting agency [Curriculum change].

(c) Failure to obtain approval of changes that require approval prior to implementation [Change in use of clinical facilities].

(d) Providing false or misleading information to students or the

public concerning the program of nursing [Student attention rate]

(e) Violation of the board's administrative regulations [License examination pass rate].

(f) A change in or the inability to secure or retain a qualified program administrator or faculty.

(g) Failure to provide clinical experiences necessary to meet the outcomes of the program of nursing.

(h) Evidence of a high student or faculty attention rate as compared to the state average.

(i) Failure to maintain an annual NCLEX pass rate for first time testers of at least eighty-five (85) percent for two (2) consecutive years.

(j) A change in the ownership or organizational restructuring of the governing institution.

(k) As deemed necessary by the board to determine compliance with administrative regulations and requirements.

(5)(3) The scheduling of site visits [surveys] during [the period of] initial approval shall be based on board required reports and on evaluations submitted by the program [nursing] administrator, [type of program of nursing planned,] and as required by administrative regulation.

(6)(4) The scheduling of site visits [surveys] of governing institutions planning to establish a program of nursing or a secondary or distance learning site shall be based upon the [preliminary report] information submitted within the [and date of receipt of] proposal for the new program as required by the board and by administrative regulation.

(7) The board shall have the authority to visit a program of nursing on an announced or unannounced basis. [(5) Approved programs of nursing with a licensure examination pass rate less than eighty-five (85) percent shall be surveyed by the board as required by administrative regulation and as deemed necessary by the board.]

(6) Programs of nursing desiring to establish nursing extension programs shall be surveyed according to 201 KAR 20:290. Standards for prelicensure registered nurse and practical nurse extension programs.]

Section 4. Board Action Following Site Visits (1) The board shall evaluate a program of nursing in terms of its compliance with administrative regulations 201 KAR 20:260 through 20:360.

(2) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the program administrator for review and correction of factual data.

(3) Following the board's review and decision, a letter shall be sent to the program administrator and the head of the governing institution regarding the approval status of the program of nursing as outlined in 201 KAR 20:360.

JIMMY ISENBERG, President

APPROVED BY AGENCY: October 25, 2007

FILED WITH LRC: November 29, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on January 22, 2008, at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards for site visits to review prelicensure programs of nursing for compliance with board regulations.

(b) The necessity of this administrative regulation. The Board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments update and modernize the standards required for site visits. The term site visit is used instead of surveys. The types of visits are set out and when and how visits are to be made.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been comprehensively updated in over 20 years. Many changes in the structure of prelicensure programs of nursing have occurred during that time, necessitating this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: By setting appropriate standards.

(d) How the amendment will assist in the effective administration of the statutes: By setting appropriate standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing. Currently, there are 44 RN programs and 22 LPN programs.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to meet the standards set by this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost, if any, cannot be estimated and will vary by program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prelicensure programs of nursing will be held to more appropriate standards and be more successful at educating nurses.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? The Kentucky Board of Nursing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111 and 314.131.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It will generate no revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It will generate no revenue.

(c) How much will it cost to administer this program for the first year? No costs are associated with this change.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this change.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET  
Board of Nursing  
(Amendment)

201 KAR 20:290. Standards for prelicensure registered nurse and practical nurse secondary or distance learning sites [extension programs].

RELATES TO: KRS 314.011(5), (9), 314.111(1), (2), (3)

STATUTORY AUTHORITY: KRS [Chapter] 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: It is necessary to establish standards for the development and approval of secondary or distance learning [nursing extension] programs which prepare graduates for admission to the licensure examination and to facilitate endorsement of licensure status to other states.

Section 1. Definitions. (1) "Secondary or distance learning site" means a nonmain location where educational activities are conducted and meets one of the following provisions:

(a) A student may obtain fifty (50) percent or more credits towards a degree or diploma program;

(b) A student may obtain fifty (50) percent or more credits towards a degree or diploma program via an electronic method; or

(c) Is geographically close to the main campus that oversees the learning site such that students must utilize services provided at the main campus.

Section 2. Establishment of a Nursing Secondary or Distance Learning Site (1) The addition of a secondary or distance learning site shall not be considered unless the program of nursing meets the following:

(a) The governing institution that establishes and conducts the program of nursing shall be accredited as outlined in 201 KAR 20:260. Section 1.

(b) The program of nursing shall hold full approval for a minimum of three (3) years.

(c) First time test takers from the program of nursing shall have achieved an overall pass rate of at least eighty-five (85) percent on the NCLEX examination for a minimum of three (3) consecutive years.

Section 3. Letter of Intent (1) The governing institution shall submit to the board a letter of intent to establish a secondary or distance learning site along with the fee required by 201 KAR 20:240. The letter of intent and additional preliminary information

shall be supplied to the board at least six (6) months prior to the desired admission of the first class.

(2) The letter of intent shall be completed under the direction or consultation of a registered nurse who meets the qualifications of a program administrator as outlined in 201 KAR 20:310.

(3) The letter of intent shall include:

(a) The name of the degree or diploma granting institution accredited by an accrediting body recognized by the United States Department of Education;

(b) The consent of the approving board or body of the governing institution;

(c) General information about the governing institution including the mission, ownership, method of financing, accreditation, enrollment, area served, and institutional faculty qualifications and resources.

(d) Documentation of the need for the level of nurses in the area to be served by the secondary or distance learning site;

(e) Documentation from cooperating healthcare agencies in the community that will provide support for the creation of the secondary or distance learning site. This documentation shall include evidence of the agencies' intention to contribute to the achievement of the clinical objectives of the site;

(f) Investigation of the projected impact on the operations of program of nursing within a fifty (50) mile radius of the site. Evidence that an introductory letter was sent to the impacted programs shall be included; and

(g) A timeline for the admission of students and graduation of the first class.

(4) Upon approval of the letter of intent by the board, the governing institution shall be notified in writing.

**Section 4. Proposal Phase.** (1) The secondary or distance learning site shall not be announced, advertised, or students admitted until the proposal has been approved and developmental status has been granted by the board.

(2) Developmental status shall be granted to the proposal to establish a secondary or distance learning site upon presentation to the board of evidence of the following:

(a) Participation by the program administrator in planning the secondary or distance learning site;

(b) The name and qualifications of the program administrator;

(c) The name and qualifications of the assistant program administrator as defined in 201 KAR 20:310;

(d) Philosophy, purpose, and objectives of the governing institution, program of nursing, and the proposed secondary or distance learning site;

(e) Administrative and academic policies of the governing institution, program of nursing, and the proposed secondary or distance learning site;

(f) Identification of any differences between the policies to be utilized at the secondary or distance learning site as compared to the primary location;

(g) Organizational plan and administrative policies for implementation of the secondary or distance learning site;

(h) Adequacy and availability of student services consistent with those at the main campus;

(i) Plan for employment of qualified faculty who shall be employed sufficiently in advance of the opening date to provide for program planning and development and for orientation to the facilities.

(j) An identified curriculum and conceptual or organizing framework to be used and any planned revisions;

(k) The availability and willingness of accredited agencies to provide clinical experiences across the curriculum;

(l) Evidence of availability of adequate finances to support the secondary or distance learning site which shall include:

1. Sufficient financial resources as identified in an approved budget for the secondary or distance learning site;

2. The source of the funding identified;

3. The stability of the source of funding to maintain the operation of the secondary or distance learning site, and

4. Any stipulations for use of any special finances;

(m) Evidence of the availability of adequate classrooms, laboratories, conference rooms, and library resources appropriate for

the needs of the secondary or distance learning site which shall include:

1. Sufficient space and equipment allocated for use of faculty and students as outlined in 201 KAR 20:350; and

2. Library and learning resources that support achievement of meeting curricular objectives and future plans for maintaining these resources;

(n) A plan for evaluation of the secondary or distance learning site consistent with 201 KAR 20:360; and

(o) The effects of the secondary or distance learning site on the governing institution and the program of nursing.

**Section 5. Proposal Review Process.** (1) A completed program proposal shall be submitted to the board by the governing institution no less than six (6) months prior to the anticipated opening date for the secondary or distance learning site.

(2) A representative of the board shall conduct a site visit to the secondary or distance learning site and submit a written report to the board.

(3) The governing institution shall be notified in writing of action taken by the board on the proposal and the site visit.

(4)(a) If the board determines that all requirements have been met, the program shall be granted developmental status.

(b) If the board determines that all requirements have not been met, the program may be granted developmental status based on compliance with the terms and conditions identified.

(c) If the program does not comply with the terms and conditions identified, approval shall be denied.

(5) No students shall be admitted to the secondary or distance learning site until developmental status has been granted by the board.

(6)(a) Approval to establish a secondary or distance learning site may be withdrawn if requirements are not met and if a student class is not enrolled within eighteen (18) months.

(b) If the board determines that a proposed program does not comply with all administrative regulations, developmental or initial approval may be withdrawn.

(c) The governing institution shall be notified in writing of the withdrawal of developmental or initial approval.

**Section 6. Approved Secondary or Distance Learning Sites.** (1) Reports shall be submitted to the board in accordance with 201 KAR 20:360, Section 3.

(2) The status of the proposal automatically moves from developmental to initial approval upon admission of the first class. It is the responsibility of the program of nursing to notify the board of the admission of the first class.

(3) Full approval is the designation granted to a secondary or distance learning site that has implemented the proposal and that continues to meet standards.

(4) A secondary or distance learning site is eligible for full approval upon graduation of the first class providing there is evidence that standards have been met.

(5) The program of nursing shall notify the board in writing at least thirty (30) days prior to the graduation of the first class.

(6) Within ninety (90) days of graduation of the first class, the faculty shall conduct a self study that evaluates the establishment of the secondary or distance learning site according to the proposal and shall submit a written report to the board prior to consideration for full approval.

(7) The decision to grant full approval shall be based upon a review of the following:

(a) The program evaluation by the faculty and the program administrator;

(b) The site visit report by the board representative conducted to evaluate compliance with administrative regulations; and

(c) Other facts that pertain to the secondary or distance learning site and reports deemed necessary to document that standards have been met.

(8) The retention of full approval of a secondary or distance learning site is contingent on meeting standards as set forth in 201 KAR 20:260 through 20:360. [Establishment of a Nursing-Extension Program.-(1) The governing institution shall submit to the board a completed application form which is supplied by the board.

(2) A proposal to establish a nursing extension program shall not be considered until evidence of the following is presented:

- (a) A minimum of three (3) consecutive licensure examination pass rates of eighty-five (85) percent immediately prior to submission of the application form.
- (b) Conference with a representative of the board.
- (c) Consent of approving board or body of the governing institution.
- (d) Participation by nurse administrator of the program of nursing in planning the extension program.
- (3) The proposal for an extension program should address the following:
  - (a) Statement of need for graduates.
    - 1. Documentation of need for nurses in the areas to be served by the governing institution.
    - 2. Documentation of an adequate pool of qualified applicants interested in the extension program.
  - (b) Designated responsibilities of cooperating parties, if applicable.
    - 1. Philosophy, purpose, and objectives of the governing institution, approved program of nursing, and the proposed extension program.
    - 2. Administrative and academic policies of the governing institution, approved program of nursing, and the proposed extension program.
    - 3. Organizational plan and administrative policies for implementation of the extension program.
    - 4. Adequacy of arrangements made to provide services.
  - (c) Name of degree or diploma granting institution accredited by the southern association of colleges and schools or appropriate accrediting body.
  - (d) Name and qualifications of the nurse administrator.
  - (e) Plan for employment of qualified faculty. Faculty shall be employed sufficiently in advance of opening date to provide for program planning and development and for orientation to facilities.
  - (f) Identified curriculum and conceptual or organizing framework to be used, and any planned revisions.
  - (g) Evidence of availability of clinical facilities accredited by the joint commission on accreditation of hospitals or other appropriate approval bodies.
    - 1. Documentation of planning for utilization of accredited facilities.
    - 2. Documentation from clinical facilities agreeing to accommodate students.
    - 3. Availability and provision of services to meet curricular objectives within clinical facilities to be utilized.
    - 4. Cooperative planning for use of clinical facilities with other programs of nursing.
  - (h) Evidence of availability of adequate finances to support the extension program.
    - 1. Sufficient financial resources as identified in an approved budget for the extension program.
    - 2. Source(s) of funding identified.
    - 3. Stability of source(s) of funding to maintain operation of the extension program.
    - 4. Stipulations for use of special finances, if applicable.
  - (i) Evidence of availability of adequate classrooms, laboratories, conference rooms, and library resources appropriate for the needs of the extension program.
    - 1. Sufficient space and equipment allocated for use of faculty and students.
    - 2. Allocated space is conducive to the teaching and learning process.
    - 3. Library and learning resources which support achievement of meeting curricular objectives.
  - (j) Plan for evaluation of the total extension program including:
    - 1. Student achievement.
    - 2. Review of program objectives.
    - 3. Input from faculty, students, administrators, and clinical facility employees.
    - 4. Percentage pass rate of graduates on the licensure examination.
    - 5. Identification and analysis of student attrition rate.
    - 6. Effects of the extension program on the governing institution and the program of nursing.

Section 2. Proposal Review Process—(1) A completed program proposal shall be submitted to the board by the governing institution no less than eight (8) months prior to the anticipated opening date for the nursing extension program.

(2) A representative of the board shall survey the extension program and submit a written report to the board.

(3) Developmental approval shall be dependent upon the appointment of qualified faculty and acceptance of the program proposal which includes provision for evaluation of the program.

(4) The governing institution shall be notified in writing of action taken by the board on the proposal and survey report.

(5) No students shall be admitted to the program of nursing until developmental approval has been granted by the board.

(6) Approval to establish an extension program may be withdrawn if program requirements are not met and if a student class is not enrolled within eighteen (18) months after the board granted developmental approval. The governing institution shall be notified in writing of the withdrawal of developmental approval.

Section 3. Approved Nursing Extension Program—(1) Required reports shall be submitted to the board in accordance with Section 3 of 201 KAR 20-360, Evaluation of prelicensure registered nurse and practical nurse programs.

(2) The retention of the approval designation of an extension program is contingent upon meeting standards as set forth by the board.]

JIMMY ISENBERG, President

APPROVED BY AGENCY: October 25, 2007

FILED WITH LRC: November 29, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2008, at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards for secondary and distance learning sites of prelicensure RN and LPN programs of nursing.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments update and modernize the standards required for secondary and distance learning sites. It defines those terms and sets out the procedures for a program of nursing to establish such a site.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been comprehensively updated in over 20 years. Many changes in the structure of prelicensure programs of nursing have occurred during that

time, necessitating this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: By setting appropriate standards.

(d) How the amendment will assist in the effective administration of the statutes: By setting appropriate standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing. Currently, there are 44 RN programs and 22 LPN programs.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to meet the standards set by this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost, if any, cannot be estimated and will vary by program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prelicensure programs of nursing will be held to more appropriate standards and be more successful at educating nurses.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Nursing

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111 and 314.131

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No costs are associated with this change.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this change.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:360. Evaluation of prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111(1), (2), (3), [314.131(1)]

STATUTORY AUTHORITY: KRS [Chapter] 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: Evaluative standards need to be established to assure that the programs of nursing provide the necessary instruction and services to prepare graduates for licensure eligibility as registered nurses or as practical nurses.

Section 1. Approval Status and Withdrawal of Approval. (1) Approval status is based upon each program of nursing's performance and demonstrated compliance with board requirements.

(a) Developmental approval is the designation granted to a proposed program of nursing to continue development of plans for program implementation.

(b) Initial approval is the designation granted to a new program of nursing upon admission of the first class, provided the date of enrollment is within eighteen (18) months of board approval of the proposal. During the period of initial approval, reports documenting implementation of the proposal shall be submitted on a quarterly basis.

(c) Full approval is the designation granted to a program of nursing that has implemented the proposal and that continues to meet standards.

(d) Qualified approval is the designation granted to a program of nursing that has partially met the requirements of 201 KAR 20:260 through 360, with areas of deficiencies delineated.

1. Following the decision of the board to place a program of nursing on qualified approval, the program administrator shall be notified of the areas of deficiency and a timeframe shall be set by the board for corrective actions to be implemented.

2. The program administrator shall, within thirty (30) days of the notice of the deficiencies, file a plan of compliance detailing corrective action for each of the identified deficiencies. If the plan of compliance is not received within thirty (30) days, the program shall pay a fine of \$100 per day as permitted by KRS 314.991(1) for each day the plan is delayed.

3. The program administrator may, within thirty (30) days of the notice of the deficiencies, request to appear before the board to contest the board's determination of deficiencies.

4. If the board's determination of deficiencies has not been contested or if the deficiencies are upheld after a request to contest them, the board may conduct periodic evaluations of the program of nursing during the time of correction to determine that deficiencies have been corrected.

5. If the plan of compliance is not completed satisfactorily within the time frame set by the board and if the program of nursing has not been granted additional time for completion, the approval status of the program of nursing shall be adjusted to conditional and a fee of \$5,000 shall be imposed.

(e) Conditional approval is the designation granted to a program of nursing when one or more standards have not been met.

1. Following the decision of the board to place a program of nursing on conditional status, the program administrator shall be notified of the areas of deficiency and the time frame allowed for corrective action to be implemented.

2. The program administrator shall, within thirty (30) days of the notice of deficiencies, file a plan to correct each of the deficiencies. If the plan of compliance is not received within thirty (30) days, the program shall pay a fine of \$100 per day as permitted by KRS 314.991(1) for each day the plan is delayed.

3. The program administrator may, within thirty (30) days of the notice of the deficiencies, request to appear before the board to contest the board's determination of deficiencies.



4. If the board's determination of deficiencies has not been contested or if the deficiencies are upheld after a request to contest them, the board may conduct periodic evaluations of the program of nursing during the time of correction to determine that deficiencies have been corrected.

5. If the plan of compliance is not completed satisfactorily within the time frame set by the board and if the program of nursing has not been granted additional time for completion, the approval status of the program of nursing shall be adjusted to probational and a fee of \$5,000 shall be imposed.

(f) Probational approval is the designation granted to a program of nursing when one (1) or more standards have continued to be unmet.

1. Following the decision of the board to place a program of nursing on probational status, the program administrator shall be notified of the continued areas of deficiency. No new students may be admitted until the time the program of nursing comes into compliance. This period of time shall not exceed one academic year.

2. The program administrator shall, within thirty (30) days of the notice of the deficiencies, file a plan to correct each of the identified deficiencies.

3. The program administrator may, within thirty (30) days, of the notice of the deficiencies, submit a request to appear before the board to contest the board's determination of deficiencies.

4. If the board's determination of deficiencies has not been contested or if the deficiencies are upheld after a request to contest them, the board may conduct periodic evaluations of the program of nursing during the time of correction to determine that deficiencies have been corrected.

(g) If the program of nursing has not corrected the deficiencies within one academic year of being placed on probational status, a hearing pursuant to KRS Chapter 13B shall be conducted to determine whether to withdraw approval of the program of nursing.

(h) If the board decides to withdraw approval of a program of nursing, upon the effective date of the decision the program of nursing shall immediately cease operation and be removed from the official approved status listing. A program of nursing that has been ordered to cease operation shall assist currently enrolled students to transfer to an approved program of nursing.

**Section 2. Reports and Examination Pass Rates.** (1) A program of nursing that prepares graduates for licensure shall meet all standards in order to retain full approval. Approval status shall be determined annually by the board on the basis of the program's annual report, NCLEX examination pass rates for first time test takers, and other pertinent data.

(2) A program of nursing shall submit an annual report regarding its compliance with administrative regulations 201 KAR 20.260 through 20.360. A secondary or distance learning site shall be treated independently for purposes of compliance with the minimum standards set by the board.

(3) To verify continued compliance with these administrative regulations, the program administrator shall submit progress reports or periodic supplemental reports, completed questionnaires, surveys, and other documents as requested by the board.

(4) A program of nursing shall maintain at least an 85% annual pass rate for graduates taking the NCLEX-RN or NCLEX-PN for the first time. Pass rates shall be published on a calendar year basis for those graduates who have tested within twelve (12) months of graduation.

(5) A program of nursing and secondary or distance learning site shall be evaluated individually concerning licensure examination results.

(6) If a program of nursing's pass rate for first time test takers is less than eight-five (85) percent for a calendar year, the program administrator shall submit a self study report that evaluates factors that contributed to the graduate's performance on the NCLEX examination and a description of the corrective measures to be implemented.

**Section 3 Factors that May Jeopardize Program Approval Status.** Approval status may change for any of the following reasons: (1) deficiencies in compliance with 201 KAR 20.260 through 20.360;

(2) Noncompliance with the governing institution or program of nursing's stated philosophy, mission, program design, objectives/outcomes, or policies;

(3) Continual failure to submit records or reports to the board within the designated time frame;

(4) Failure to provide sufficient clinical learning opportunities for students to achieve stated objectives/outcomes;

(5) Failure to comply with requirements of the board or to respond to recommendations of the board within the specified time;

(6) Failure to maintain an eighty-five (85) percent pass rate on the licensure examination for first time test takers;

(7) Other activities or situations that demonstrate to the board that a program of nursing is not meeting requirements or these administrative regulations; or

(8) Withdrawal of accreditation by a national nursing accrediting body recognized by the United States Department of Education.

**Section 4 Program Evaluation.** (1) The faculty shall engage in a research based planning and evaluation process that incorporates a systematic review of the program of nursing that results in continuing improvement. This process shall result in an evaluation plan that is submitted to the board.

(2) The evaluation plan shall include evidence that data collection is evidence-based, on-going, and reflects the collection, aggregation analysis, and trending of data.

(3) The evaluation plan shall provide evidence that the outcomes of the assessment process is used to improve the quality and strength of the program.

(4) The evaluation plan shall include specific responsibilities for data collection methods, individuals or groups responsible, frequency of data collection, indicators of achievement, findings, and outcomes for evaluating the following aspects of the program;

(a) Organization and administration of the program of nursing;

(b) Curriculum;

(c) Resources, facilities, and services;

(d) Teaching and learning methods including distance education;

(e) Faculty performance;

(f) Student achievement of program outcomes;

(g) Graduation rates;

(h) Licensure examination pass rates;

(i) Employment rates of graduates; and

(j) Clinical resources.

(5) If a program of nursing utilizes distance education for didactic instruction, it shall evaluate and assess the educational effectiveness of its distance education program to insure that the distance education program is substantially comparable to a campus based program.

**Section 5. Voluntary Closure of a Program.** (1) A governing institution seeking to close a program of nursing shall submit written notification to the board at least six (6) months prior to the planned closing date.

(2) A governing institution may choose one of the following procedures for closing a program of nursing;

(a) The governing institution shall continue the program of nursing until the last class enrolled has graduated.

1. The program shall continue to meet the standards for approval until all official students who meet requirements have graduated or transferred.

2. The official closing of the program is the date on the degree, certificate, or diploma of the last graduate.

3. The governing institution shall notify the board in writing of the official closing date.

(b) The governing institution shall close the program after the transfer of students to other approved programs.

1. The program shall continue to meet the standards for approval until all students have transferred.

2. The names of students who have transferred to approved programs and the date of the last student transfer shall be submitted to the board by the governing institution.

3. The date of the last student transfer shall be the official closing date of the program.

(3) Custody of records

(a) The governing institution that continues to operate shall retain responsibility for the records of the students and graduates. The board shall be advised of the arrangement made to safeguard the records.

(b) The governing institution that ceases to exist shall transfer the academic transcript of each student and graduate to the board for safekeeping.

1. The transcript of the student or graduate shall identify the date on which the program closed.

2. The board shall be consulted about the disposition of all other program records.

Section 6. Change in Ownership or Organization of the Governing Institution (1) The governing institution shall notify the board in writing of any intent to transfer administrative authority or ownership and shall provide the following information:

(a) Evidence of state authorization to operate the institution under the new ownership or control;

(b) A description of the immediate and long-range plans by the institution under the new ownership to the program of nursing; and

(c) A list of personnel changes brought about by the change of ownership or control.

(2) The board shall conduct a site visit to insure adherence by the program of nursing to administrative regulations.

(3) Following this site visit, approval of the program of nursing shall continue under the new ownership provided the approval standards continue to be met. [Evaluation for Full Approval, Registered Nurse and Practical Nurse Programs. (1) Retaining full approval. A program of nursing that prepares graduates for licensure shall meet standards in order to retain full approval.

(2) If the program fails to submit to the board the annual list of faculty by the date specified by the board, the nurse administrator of the program shall appear before the board at a scheduled hearing to show cause that approval of the program of nursing be continued.

(3) If the nurse faculty do not meet the minimum qualifications as set forth in 201 KAR 20.340, faculty for prelicensure registered nurse and practical nurse programs, the nurse administrator of the program shall appear before the board at a scheduled hearing to show cause that approval of the program of nursing be continued.

(4) If for one (1) fiscal year the graduates of a program of nursing achieve a pass rate less than eighty-five (85) percent on the licensure examination:

(a) A letter of concern shall be issued.

(b) The nurse administrator shall be requested to submit an analysis of the cause(s) of the high failure rate on the licensure examination and plans to correct the deficiencies for the future.

(5) If for two (2) consecutive fiscal years the graduates of a program of nursing achieve a pass rate less than eighty-five (85) percent on the licensure examination:

(a) A letter of warning shall be issued.

(b) The nurse administrator shall appear before the board and give a report of the implementation of the plans submitted to the board the previous year and to present any further analysis and plans to correct the deficiencies as defined.

(c) The program of nursing shall be surveyed by a representative of the board.

(6) If for three (3) consecutive fiscal years the graduates of a program of nursing achieve a pass rate less than eighty-five (85) percent on the licensure examination, the nurse administrator and the head of the governing institution or designee shall appear before the board to show cause that approval of the program be continued.

(7) Evaluation. The faculty shall perform systematic and periodic evaluation of the total program including:

(a) Organization and administration of the program of nursing.

(b) Curriculum.

(c) Resources, facilities, and services.

(d) Teaching and learning methods.

(e) Faculty.

(f) Students.

(g) Graduates.

(h) Licensure examination pass rates.

Section 2. Board Evaluation. (1) The nurse administrator shall inform the board of any changes in the governing institution or program of nursing.

(2) A yearly progress report and evaluation shall be made by the nurse administrator to the board during the period of initial approval of a program of nursing.

Section 3. Reports to the Board. (1) Annual.

(a) A report is required from each program of nursing on forms supplied by the board.

(b) A faculty summary shall be submitted on forms supplied by the board.

(2) Faculty.

(a) Faculty appointments shall be reported on forms supplied by the board.

(b) The nurse administrator shall report a change in faculty composition within thirty (30) days of such change.

(3) The board shall require such additional reports from programs of nursing as may be deemed necessary to determine continued eligibility for approval.]

JIMMY ISENBERG, President

APPROVED BY AGENCY: October 25, 2007

FILED WITH LRC: November 29, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2008, at 10 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards for the evaluation of prelicensure RN and LPN programs of nursing.

(b) The necessity of this administrative regulation. The Board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments update and modernize the standards required for evaluation of RN and LPN programs. It sets out the type of approval statuses and what happens when a program does not meet standards.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been comprehensively updated in over 20 years. Many changes in the structure of prelicensure programs of nursing have occurred during that time, necessitating this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: By setting appropriate standards.

(d) How the amendment will assist in the effective administra-

tion of the statutes: By setting appropriate standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing. Currently, there are 44 RN programs and 22 LPN programs.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to meet the standards set by this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost, if any, cannot be estimated and will vary by program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prelicensure programs of nursing will be held to more appropriate standards and be more successful at educating nurses.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It sets a new fee for change in approval status of a program of nursing. This fee is necessary since a change in approval status from full approval to a lesser status necessitates the expenditure of additional services by the Board to the program of nursing. In addition to this fee, this administrative regulation imposes a fine for failure to file a plan of compliance. This fine is authorized by KRS 314.991(1) in a range of from \$50 to \$500. This administrative regulation sets the fine for failure to file a plan of compliance at \$100 per day for each day delayed.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, 314.131, and 314.991.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

It is impossible to estimate the revenue this administrative regulation will potentially generate. If all programs of nursing comply with the standards, there will be no revenue generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is impossible to estimate the revenue this administrative regulation will potentially generate.

(c) How much will it cost to administer this program for the first year? There are no costs associated with this change.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this change.

Note. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Physical Therapy (Amendment)

#### 201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 327.050, 327.060, 327.080

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13), 327.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine whether physical therapist applicants meet the qualifications and standards required by KRS Chapter 327, and 327.040(13) allows the board to promulgate administrative regulations regarding the qualifications for physical therapist assistants. This administrative regulation establishes the criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

Section 1. Applications shall be accepted for credentialing based on successful completion by the applicant of one (1) of the following processes:

- (1) Examination;
- (2) Endorsement; or
- (3) Reinstatement.

Section 2. To be eligible for the examination, the applicant shall:

- (1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;
- (2) Submit certification of completion by the educational administrator of that program;
- (3) Have completed an educational course at least two (2) [four (4)] hours in length which has been approved by the Cabinet for Health Services (CHS) on the transmission, control, treatment and prevention of human immunodeficiency virus infection and AIDS;
- (4) Submit a completed application for credentialing;
- (5) Submit the correct fee as required in 201 KAR 22:135; and
- (6) Register for the examination.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:

- (1) Meet the eligibility requirements of Section 2 of this administrative regulation; and
- (2) Register with the Federation of State Boards of Physical Therapy (FSBPT) Score Transfer Service to have results submitted to Kentucky

Section 4. To be eligible for credentialing by endorsement, the applicant shall:

- (1) Meet the requirements established in Section 2(1), (3), (4), and (5) of this administrative regulation,
- (2) Have successfully completed the examination and register with the FSBPT to have results submitted to Kentucky.

(a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993 shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75).

(b) After July 1, 1993, a passing score shall be the criterion

referenced passing point recommended by the FSBPT set equal to a scaled score of 600.

(c) Other examinations as determined by the board may be approved in lieu of, or in addition to, the NPTE;

(3) Have an active credential in this profession in another jurisdiction; and

(4) Have verification of credentials showing the credential has never been revoked, suspended, on probation or under disciplinary review in another jurisdiction.

Section 5. To be eligible for reinstatement the applicant shall meet the requirements in 201 KAR 22:040.

Section 6. A credential issued by the board shall be in effect until March 31 of the next uneven-numbered year.

Section 7. Incorporation by Reference. (1) "Application for Credentialing 11/15/2007/3/22/2007", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

DEBRA TURNER P.T., Chair

APPROVED BY AGENCY: November 15, 2007

FILED WITH LRC: December 10, 2007 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2007 at 9 a.m. at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159, (502) 429-7140 and fax (502) 429-7142.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the eligibility and application procedures for Physical Therapists and Physical Therapist Assistants.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.040.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the qualifications and procedures for applying for a license to practice physical therapy in the State of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the qualifications and procedures for applying for a license to practice physical therapy in the State of Kentucky.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment is eliminating the temporary license. The necessity of the amendment to this administrative regulation: To protect the health and welfare of the public by eliminating an temporary license

(b) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licens-

ing and renewal procedures.

(c) How the amendment will assist in the effective administration of the statutes: By clarifying the procedures for licensing requirements

(d) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 100 physical therapists and physical therapist assistants.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Since there will be no temporary license for new graduates, the exam applicants will be required to pass the national exam before they can work as a physical therapist or physical therapist assistant

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities in questions (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): When a person who has been issued a temporary license fails the national exam, the temporary license is revoked and they can no longer work as a physical therapist or physical therapist assistant. Therefore, this process is being eliminated.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be minimal costs to the board.

(b) On a continuing basis: Minimal costs to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will no increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not change the fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Physical therapists and physical therapists assistants credentialed by the board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040 and 327.050

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

**GENERAL GOVERNMENT CABINET  
Kentucky Real Estate Appraisers Board  
(Amendment)**

**201 KAR 30:190. Educational requirements for certification effective January 1, 2008.**

RELATES TO: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3) NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3)(d) requires the board to establish by administrative regulations requirements for education of appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions including the education requirements promulgated by the Appraisers Qualifications Board. This administrative regulation establishes the education requirements for appraisers of real property in federally-related transactions that will be effective after December 31, 2007.

Section 1. Definitions. (1) "AQB" means the Appraiser Qualification Board of the Appraisal Foundation.

(2) "ASB" means the Appraiser Standards Board of the Appraisal Foundation.

(3) "Class hour" means sixty (60) minutes, of which at least fifty (50) minutes are instruction attended by the student, including time for examinations.

(4) "Required Core Curriculum" means the list of course topics identified in Section 7 of this administrative regulation.

Section 2. (1) Credit for the qualifying education requirements set out in this administrative regulation may be obtained only from the following providers:

- (a) Colleges or universities;
- (b) Community or junior colleges;
- (c) Real estate appraisal or real estate related organizations;
- (d) State or federal agencies or commissions;
- (e) Proprietary schools;
- (f) Providers approved by the board in accordance with 201 KAR 30:150; and

(g) The Appraisal Foundation or its boards.

(2) Experience may not be substituted for education.

Section 3. Criteria Specific to Qualifying Education. (1) A class hour will be credited only for educational offerings with content that follows the Required Core Curriculum in Section 7 of this administrative regulation for each respective credential.

(2) The course content requirement may be general or it may be specific to a property type.

(3) A class hour may be obtained only where:

- (a) The minimum length of the educational offering is at least fifteen (15) hours; and
- (b) The student successfully completes an approved closed-book examination pertinent to that educational offering.

(4) If an individual qualifying education course covers multiple topics identified within the Required Core Curriculum, there shall be appropriate testing of each component.

(5) Courses taken to satisfy the qualifying education requirements shall not be repetitive.

(6) Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.

(7) USPAP courses.

(a) An applicant shall take the 15-Hour National USPAP Course, or its equivalent, and pass the associated 15-Hour National USPAP Course Examination as approved by the AQB.

(b) At least one (1) of the course instructors shall be an AQB Certified USPAP Instructor who is also a state certified appraiser.

(c) USPAP course content equivalency shall be determined by the AQB or by an alternate method established by the AQB.

Section 4. Qualifying education for Associate Real Property Appraiser effective January 1, 2008. (1) Regardless of the applicant's accrual of [experience-or] education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained his or her certification as an associate real property appraiser shall be required to fulfill the requirements of this section if the certification is not issued on or before December 31, 2007.

(2) Prior to applying for an associate real property appraiser certification, an applicant shall have completed ninety (90) [seventy-five (75)] class hours as specified in the Required Core Curriculum Section 7 of this administrative regulation, which shall include at least fifteen (15) hours related to basic income.

(3) An applicant shall pass:

(a) The Required Core Curriculum examination for each course taken; and

(b) The 15-Hour National USPAP Course or its equivalent and examination as stated in section 3(7) of this administrative regulation.

Section 5. Qualifying education for Licensed real property appraisers effective January 1, 2008. (1) Regardless of the applicant's accrual of [experience-or] education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained licensure shall be required to fulfill the requirements of this section if the license is not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be successful completion of 180[160] class hours as specified in the required core curriculum Section 7.

(3) The applicant shall successfully complete the 15-Hour National USPAP Course, or its equivalent, and examination required by Section 3(7) of this administrative regulation. There is no alternative to successful completion of the examination.

(4) An applicant for the licensed real property certificate shall hold an associate degree, or higher, from an accredited college, junior college, community college, or university, unless the requirements of subsection (5) of this section are satisfied.

(5)(a) In lieu of the associate degree, an applicant for the certified residential real property certification shall successfully pass twenty-one (21) semester credit hours in the following collegiate subject matter courses from an accredited college, junior college, community college, or university:

1. English Composition;
2. Principles of Economics (Micro or Macro);
3. Finance;
4. Algebra, Geometry, or higher mathematics;
5. Statistics;
6. Introduction to Computers-Word processing/spreadsheets;
- and
7. Business or Real Estate Law.

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program (CLEP) examinations and issues a transcript for the examination, showing its approval, it will be accepted as credit for the college course.

Section 6. Qualifying education for certified residential real property appraisers certification effective January 1, 2008. (1) Regardless of the applicant's accrual of [experience-or] education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained certification as a certified residential real property appraiser shall be required to fulfill the requirements of this section if the certification is not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be completion of 200 class hours as specified in the required core curriculum Section 7.

(3) The applicant shall successfully complete the 15-Hour National USPAP Course, or its equivalent, and the examination required by Section 3(7) of this administrative regulation.

(4) An applicant for the certified residential real property certificate shall hold an associate degree, or higher, from an accredited college, junior college, community college, or university, unless the requirements of subsection 5 of this section are satisfied.

(5)(a) In lieu of the associate degree, an applicant for the certified residential real property certification shall successfully pass twenty-one (21) semester credit hours in the following collegiate subject matter courses from an accredited college, junior college, community college, or university:

1. English Composition;
2. Principles of Economics (Micro or Macro);
3. Finance;
4. Algebra, Geometry, or higher mathematics;
5. Statistics;
6. Introduction to Computers-Word processing/spreadsheets;

and

7. Business or Real Estate Law.

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program® (CLEP) examinations and issues a transcript for the examination, showing its approval, it will be accepted as credit for the college course.

Section 7. Qualifying Education for Certified General Real Property Appraiser certification effective January 1, 2008. (1) Regardless of the applicant's accrual of ~~[experience or]~~ education prior to January 1, 2008, any applicant who has not completed all of the elements necessary for certification and obtained certification as a certified general real property appraiser shall be required to fulfill the requirements of this section if the certification is not issued on or before December 31, 2007.

(2) The prerequisite for taking the AQB approved examination shall be completion of 300 class hours as specified in the required core curriculum Section 7.

(3) The applicant shall complete the 15-Hour National USPAP Course and examination.

(4) An applicant shall demonstrate that his or her education includes the core courses listed in these criteria, with particular emphasis on nonresidential properties.

(5) An applicant for the certified general real property certificate shall hold a bachelors degree or higher from an accredited college or university, unless the requirements of the subsection (6) of this section are satisfied.

(6)(a) In lieu of the bachelors degree, an applicant for the certified general real property appraiser credential shall successfully pass thirty (30) semester credit hours or its equivalent in the following collegiate level subject matter courses from an accredited college, junior college, community college or university:

1. English Composition;
2. Micro Economics;
3. Macro Economics;
4. Finance;
5. Algebra, Geometry, or higher mathematics;
6. Statistics;
7. Introduction to Computers-Word processing/spreadsheets;
8. Business or Real Estate Law; and
9. Two (2) elective courses in accounting, geography, ageconomics, business management, or real estate.

(b) If the accredited college, junior college, community college, or university accepts the College-Level Examination Program® (CLEP) examinations and issues a transcript for the examination showing its approval, it shall be accepted as credit for the college course.

Section 8. Effective January 1, 2008, the required core curriculum and class hours for each of the types or classification of licenses or certificate holders shall be as follows:

- (1) Associate Real Property Appraiser consisting of ninety (90)

~~[seventy-five (75)]~~ class hours.

- (a) Basic appraisal principles-thirty (30) class hours.
- (b) Basic appraisal procedures-thirty (30) class hours.
- (c) Basic income property appraising-fifteen (15) class hours.
- (d) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) hours.

(2) Licensed real estate appraiser consisting of 150 class hours.

- (a) Basic appraisal principles- thirty (30) class hours.
- (b) Basic appraisal procedures-thirty (30) class hours.
- (c) Basic income property appraising-fifteen (15) class hours.
- (d) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.

~~(e)(d)~~ Residential market analysis and highest and best use-fifteen (15) class hours.

~~(f)(e)~~ Residential appraiser site valuation and cost approach-fifteen (15) class hours.

~~(g)(f)~~ Residential sales comparison and income approaches-thirty (30) class hours.

~~(h)(g)~~ Residential report writing and case studies-fifteen (15) class hours.

(i) Statistics, modeling and finance-fifteen (15) class hours.

(j) Advanced residential applications and case studies-fifteen (15) class hours.

(3) Certified residential real estate appraiser consisting of 200 class hours.

- (a) Basic appraisal principles-thirty (30) class hours.
- (b) Basic appraisal procedures-thirty (30) class hours.
- (c) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.

(d) Residential market analysis and highest and best use-fifteen (15) class hours.

(e) Residential appraiser site valuation and cost approach-fifteen (15) class hours.

(f) Residential sales comparison and income approaches-thirty (30) class hours.

(g) Residential report writing and case studies-fifteen (15) class hours.

(h) Statistics, modeling and finance-fifteen (15) class hours.

(i) Advanced residential applications and case studies-fifteen (15) class hours.

(j) Appraisal subject matter electives-twenty (20) class hours.

(4) Certified general real estate appraiser consisting of 300 class hours.

- (a) Basic appraisal principles-thirty (30) class hours.
- (b) Basic appraisal procedures-thirty (30) class hours.
- (c) 15-Hour national USPAP course or fifteen (15) hours its equivalent-fifteen (15) class hours.

(d) General appraiser market analysis and highest and best use-thirty (30) class hours.

(e) Statistics, modeling and finance-fifteen (15) class hours.

(f) General appraiser site valuation and cost approach-thirty (30) class hours.

(g) General appraiser sales comparison approach-thirty (30) class hours.

(h) General appraiser income approach-sixty (60) class hours.

(i) General appraiser report writing and case studies-thirty (30) class hours.

(j) Appraisal subject matter electives-thirty (30) class hours.

(5) The required core curriculum classes shall cover the topics set out in this subsection.

(a) Basic appraisal principles.

1. Real property concepts and characteristics, including basic real property concepts, real property characteristics, and legal description.

2. Legal consideration including forms of ownership, public and private controls, real estate contracts, and leases.

3. Influences on real estate values, including governmental influences, economic influences, social influences, environmental, geographic and physical influences.

4. Types of value including market value and other value types.

5. Economic principles including classical economic principles and application and illustrations of the economic principles.

6. Overview of real estate markets and analysis including mar-



ket fundamentals, characteristics, and definitions, supply analysis, demand analysis, use of market analysis.

7. Ethics and how they apply in appraisal theory and practice.

(b) Basic appraisal procedures.

1. Overview of approaches to value.

2. Valuation procedures.

a. Defining the problem;

b. Collecting and selecting data;

c. Analyzing;

d. Reconciling and final value opinion; and

e. Communicating the appraisal.

3. Property description.

a. Geographic characteristics of the Land or Site;

b. Geologic characteristics of the Land or Site;

c. Location and neighborhood characteristics;

d. Land/site considerations for highest and best use; and

e. Improvements-architectural styles and types of construction.

4. Residential applications.

(c) The 15-Hour National USPAP Course or its equivalent.

1. Preamble and ethics rules

2. Standard 1.

3. Standard 2.

4. Standards 3 to 10.

5. Statements and advisory opinions.

(d) Residential market analysis and highest and best use.

1. Residential markets and analysis.

a. Market fundamentals, characteristics and definitions;

b. Supply analysis;

c. Demand analysis; and

d. Use of market analysis.

2. Highest and best use.

a. Test constraints;

b. Application of highest and best use;

c. Special considerations;

d. Market analysis; and

e. Case studies.

(e) Residential appraiser site valuation and cost approach.

1. Site valuation.

a. Methods; and

b. Case studies.

2. Cost approach.

a. Concepts and definitions;

b. Replacement or Reproduction cost new;

c. Accrued depreciation;

d. Methods of estimating accrued depreciation; and

e. Case studies.

(f) Residential sales comparison and income approaches.

1. Valuation principles & procedures-sales comparison approach.

2. Valuation principles & procedures-income approach.

3. Finance and cash equivalency.

4. Financial calculator introduction.

5. Identification, derivation and measurement of adjustments.

6. Gross rent multipliers.

7. Partial interests.

8. Reconciliation.

9. Case studies and applications.

(g) Residential report writing and case studies.

1. Writing and reasoning skills.

2. Common writing problems.

3. Form reports.

4. Report options and USPAP compliance.

5. Case studies.

(h) Statistics, modeling and finance.

1. Statistics.

2. Valuation models (AVM's and mass appraisal).

3. Real estate finance.

(i) Advanced residential applications and case studies.

1. Complex property, ownership and market conditions.

2. Deriving and supporting adjustments.

3. Residential market analysis.

4. Advanced case studies.

(j) General appraiser market analysis and highest and best use.

1. Real estate markets and analysis.

a. Market fundamentals, characteristics and definitions;

b. Supply analysis; and

c. Demand analysis.

d. Use of market analysis.

2. Highest and best use.

a. Test constraints;

b. Application of highest and best use;

c. Special considerations;

d. Market analysis; and

e. Case studies.

(k) General appraiser sales comparison approach.

1. Value principles.

2. Procedures.

3. Identification and measurement of adjustments.

4. Reconciliation.

5. Case studies.

(l) General appraiser site valuation and cost approach.

1. Site valuation.

a. Methods; and

b. Case studies;

2. Cost approach.

a. Concepts and definitions;

b. Replacement or Reproduction cost new;

c. Accrued depreciation;

d. Methods of estimating accrued depreciation; and

e. Case studies;

(m) General appraiser income approach.

1. Overview.

2. Compound interest.

3. Lease analysis.

4. Income analysis.

5. Vacancy and collection loss.

6. Estimating operating expenses and reserves.

7. Reconstructed income and expense statement.

8. Stabilized net operating income estimate.

9. Direct capitalization.

10. Discounted cash flow.

11. Yield capitalization.

12. Partial interests.

13. Case studies.

(n) General appraiser report writing and case studies.

1. Writing and reasoning skills.

2. Common writing problems.

3. Report options and USPAP compliance.

4. Case studies.

J.W. GRABEEL, Chair

APPROVED BY AGENCY: December 6, 2007

FILED WITH LRC: December 14, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on January 22, 2008 at 9 a.m., at 2624 Research Park Drive, Suite 204 Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 15, 2008, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 2624 Research Park Drive, Suite 204 Lexington, Kentucky 40511, phone (859) 543-8943, fax (859) 543-0028.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the education requirements for certification for persons seeking certification after December 31, 2007.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the education requirements of certified and licensed appraisers after December 31, 2007.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the educational requirements for certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the educational requirements for applicants after December 31, 2007.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment removes the requirement that the experience component of license qualification is removed to allow persons who have otherwise completed the education and examination components two years to complete experience. It also amends the educational requirements to meet federal standards.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow applicants additional time to complete the experience requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.

(d) How the amendment will assist in the effective administration of the statutes: The standards of practice will assist by identifying the qualifications to acquire a certificate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately three hundred persons currently involved in seeking certification by the board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicants will have additional time to obtain the experience required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying with the amendment.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement the changes made by this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING. Is tiering applied? Tiering was applied to ensure that each of the four levels of certification identify the education that is required for that level of certification.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal man-

date.12 U.S.C. 3345

(2) State compliance standards. This administrative regulation requires compliance with the Real Property Appraiser Qualification Criteria and Interpretations which will be effective January 1, 2008 as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires that persons who are certified by the state must meet the criteria for certification as promulgated by the Appraisal Qualifications Board of the Appraisal Foundation.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

(5) Justification for imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 324A.020, 324A.035(3)(b) and 12 U.S.C. 3345.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### KENTUCKY BOARD OF EDUCATION Department of Education (Amendment)

#### 702 KAR 3:130. Internal accounting.

RELATES TO: KRS 156.160, 156.200

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070

gives the Kentucky Board of Education the management and control of the common schools. KRS 156.200 gives the Kentucky Board of Education authority over accounting procedures and reports of local school districts. This administrative regulation establishes uniform procedures for the accounting of school activity funds.

Section 1. Definition. "Activity funds" means all school funds including funds:

(1) derived from fund raising activities sponsored under the auspices of the school, "Activity funds" does not mean: and

(2) Not including funds raised or received by organizations which do not come under the direct supervision of school authorities.

Section 2. A district board of education shall:

(1) Have the responsibility for administration and control of all activity funds; and

(2) Comply with "Accounting Procedures for Kentucky School Activity Funds".

Section 3. [All] Activity funds internal accounts shall be audited annually by a certified public accountant. [All] Audit reports shall be reviewed and accepted by the local board[?] and appropriate action taken. [All] Recommendations and exceptions listed in the audit shall be reviewed by staff of the Department of Education and a report made to the district Board of Education. A copy of the school audit report shall be on file in both the office of the principal and the office of the superintendent of the local school district where it shall be open for public inspection.

Section 4. Incorporation by Reference. (1) "Accounting Procedures for Kentucky School Activity Funds", dated August 2007 [July, 2004], is hereby incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of District Support Services, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

JON E. DRAUD, Commissioner  
JOE BROTHERS, Chairperson

APPROVED BY AGENCY: December 12, 2007

FILED WITH LRC: December 14, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this proposed administrative regulation shall be held on January 28, 2008, at 2 p.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes uniform procedures for the accounting of school activity funds.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to continue the Kentucky Board of Education's authority over accounting procedures and reports of local school districts.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides

specific definitions of "Activity Funds" and incorporates by reference the "Accounting Procedures for Kentucky School Activity Funds" as required by KRS 156.200.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for the accounting of activity funds and establishes uniform procedures to account for those funds.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment incorporates updates to the existing "Accounting Procedures for Kentucky School Activity Funds" as incorporated by reference to assist in compliance with KRS 156.200.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the requirements of activity fund accounting within schools to ensure compliance with changes in Accounting and Auditing guidance as well as updates to other statutes impacting school activity funds.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the accounting requirements of the school's activity funds.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide to schools specifics for the implementation of the requirements of the uniform procedures and reports of the local school districts' activity funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, finance officers, bookkeepers and students of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education. This also impacts private CPAs performing the audits, fund-raising organizations that are under the auspices of the school.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendment will have minimal impact as the practices are already currently in place at schools and this amendment conforms to the established procedures.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): School revenue generated from fund raising activities will be properly recorded and spent in accordance with the established statute and regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The proposed amendment does not result in additional costs.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funding

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be an increase in fees or funding because of this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all public K-12 schools.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,

service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, KRS 156.200, and 156.160.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expense to school districts.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
**Department of Public Protection**  
**Office of Insurance**  
**Division of Health Insurance Policy and Managed Care**  
**(Amendment)**

**806 KAR 14:007. Rate and form filing for health insurers.**

RELATES TO: KRS 304.4-010, 304.14-120, 304.14-190, 304.17A-095, 304.17A-096

STATUTORY AUTHORITY. KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the executive director of insurance [Executive Director of Insurance] to promulgate reasonable [administrative rules and] administrative regulations necessary for or as an aid to the effectuation of [any provision of] the Kentucky Insurance Code, as defined in KRS 304.1-010 [through 304.99-452]. This administrative regulation establishes rate and form filing procedures for health insurers.

Section 1. Definitions. (1) "Basic health benefit plan" is defined in KRS 304.17A-005(4) [means any plan offered to an individual, a small group, or an employer organized association that limits coverage to physician, pharmacy, home health, preventive, emergency, and inpatient and outpatient hospital services in accordance with the requirements of KRS 304.17A].

(2) "Executive director" is defined in KRS 304.1-050(1) [means the Executive Director of Insurance].

(3) "Filing entity" means a health insurer authorized to transact business in Kentucky or an entity authorized by that health insurer to submit filings on its behalf.

(4) "Health benefit plan" is defined in KRS 304.17A-005(22).

(5) "Health policy form" or "form" means application, policy, certificate, contract, rider, endorsement, provider agreement, or risk sharing arrangement.

(6) "Office" is defined in KRS 304.1-050(2) [means the Office of Insurance].

Section 2. Filing Procedures. (1) A health insurance rate and form filing [filings] shall be accompanied by a face sheet and verification [form], Form HIPMC-F1[, April 2005 edition].

(2) A health policy form [forms] filed under policy form certification

shall be accompanied by a health policy forms filing certification privilege program [form], Form HIPMC-F2[, April 2005 edition]

(3) An individual health insurance form filing [filings] shall be accompanied by an individual health forms actuarial certification, Form HIPMC-F4[, April 2005 edition].

(4) An insurer issuing, delivering, or renewing a:

(a) Health benefit plan shall complete and attach to each plan filed a health benefit plan summary sheet-form filings, Form HIPMC-F35[, April 2005 edition]; and

(b) Basic health benefit plan shall complete and attach to each plan filed a basic health benefit plan summary sheet-form and rate filings, Form HIPMC-RF-25[, April 2005 edition]

(5) Except for a health benefit plan rate filing [filings] pursuant to KRS 304.17A-095, a rate filing shall be accompanied by a rate filing information form, Form HIPMC-R36[, April 2005 edition].

(6) If a rate or form filing as submitted by a health insurer is determined by the office not to be a complete filing, the office shall use Form HIPMC-F16[, April 2005 edition] to request additional information [from a health insurer if a rate or form filing cannot be accepted as submitted].

(7) Each form shall be identified by a unique form number in the lower left-hand corner of the first page of the form. Other numbers shall not appear in close proximity to the form number.

(8) Each submission shall be accompanied by a submittal letter on the stationery of the filing entity which intends to use a form, listing by number all forms being submitted together with a brief description of each.

(9) If a form is submitted with alternate pages or alternative benefits, the submittal letter required by subsection (8) of this section shall:

(a) State under what conditions each alternate page or alternative benefit may be used [,] and

(b) Identify by a unique form number each alternate page or alternative benefit [shall be identified by a unique form number].

(10) If a filing entity files a form containing variable text, the filing entity shall file an explanation of each variation the health insurer proposes to use.

(11) Except for an insert page [pages] or alternate page [pages], each form shall contain the corporate name and address of the health insurer.

(12) A form filed for approval by the office shall not contain [any] advertising or marketing material

(13) If a new form is submitted, the filing entity shall identify the unique features of the form.

(14) If a filing includes a form which was previously disapproved by the office, the filing entity shall assign the form a new form number.

(15) A rate or form filing shall include two (2) complete sets of documents and a self-addressed stamped envelope.

Section 3. Filing Entity. A filing entity may include in a filing multiple [any number of] forms or documents pertaining to a single line of insurance, filed together on a particular date [, pertaining to a single line of insurance].

Section 4. Date of Filing. Pursuant to [Since] KRS 304.4-010(2), a fee [requires all fees] payable under the Kentucky Insurance Code shall [to] be collected in advance. The [the] period of time in which the executive director may [affirmatively] approve or disapprove a filing shall not commence, and the submission shall not be given a filing date, until the following are received by the office:

(1) The rate or form filing;

(2) Appropriate fee pursuant to 806 KAR 4:010, Section 1(21); and

(3) Form [Forms] required by Sections 2 and 6 of this administrative regulation, as appropriate.

Section 5. Use of Forms and Rates. (1) A [Except for advertising or marketing material, a] form or rate shall not be used in Kentucky until:

(a) The form or rate has been approved or certified by the office, which shall occur within the sixty (60) day time frame identified [specified] in KRS 304.14-120(2) except as follows:

1. If the 60th day falls on a weekend or holiday, the 60th day shall be the following business day; and

2. If the executive director grants an extension of the sixty (60) day time period required for approval or disapproval of a form or rate, and the insurer does not submit a corrected form or rate [forms or rates] or additional requested information at least five (5) days prior to the expiration of the extended time period, the filing shall be disapproved.

(b) If a rate [rates] for the form is [are] required by KRS 304.14-120 to be approved, the appropriate rate schedule has been approved.

(2) A [Any] document subject to a filed only process, including [advertising, marketing material] provider directories, provider agreements, subcontract provider agreements or risk-sharing arrangements, shall be:

(a) Filed [filed] with the office; and

(b) Subject [shall be subject] to review in accordance with KRS 304.14-120.

Section 6. Form Revision. If a filing includes a form which amends, replaces, or supplements a form which has been previously filed and not disapproved, it shall be accompanied by a letter of explanation from the filing entity which identifies [setting forth]:

(1) All changes contained in the newly filed form;

(2) The form being replaced;

(3) The [and the] date the replaced form was;

(a) Approved;

(b) Withdrawn; or

(c) Submitted [approved, withdrawn, or submitted, as the case may be]; and

(4) [(3)] The effect, if any, the changes have upon the policy or the rates applicable to the policy.

Section 7. Rate Revision and Annual Rate Filings. (1) The following shall be included and properly completed in a filing for rate revision or annual rate filing:

(a) Signed actuarial memorandum, in accordance with 806 KAR 17:070, Sections 3 and 4;

(b) New rate sheet, in accordance with 806 KAR 17:070, Section 3; and

(c) Forms required by Section 2 of this administrative regulation.

(2) An appropriate fee pursuant to 806 KAR 4:010, Section 1(21) [(22)], shall be submitted with each filing.

Section 8. Officer Signature. A change of signature of the executing officer on a policy form shall not, because of this change alone, require a new filing.

Section 9. Electronic Filings (1) A health insurer [Health insurance companies] may file a rate or form [their rates and forms] in an electronic format as established by the National Association of Insurance Commissioners, in the manner prescribed by that format.

(2) An [Any] electronic filing as identified in subsection (1) of this section shall be in lieu of a physical filing.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form HIPMC-F1, "Face Sheet and Verification Form", April 2005 edition;

(b) Form HIPMC-F2, "Health Policy Forms Filing Certification Privilege Program Form", April 2005 edition;

(c) Form HIPMC-R4, "Individual Health Forms Actuarial Certification Form", April 2005 edition;

(d) Form HIPMC-F35, "Health Benefit Plan Summary Sheet-Form Filings", April 2005 [.] edition;

(e) Form HIPMC-R36, "Rate Filing Information Form", April 2005 [.] edition;

(f) Form HIPMC-F16, "Additional Health Information Request", April 2005 [.] edition; and

(g) Form HIPMC-RF-25, "Basic Health Benefit Plan Summary Sheet-Form and Rate Filings" (11/2007) [April, 2005] edition.

(2) This material may be inspected, copied or obtained, subject

to applicable copyright law, at the Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office's [internet] Web site at: <http://doi.ppr.ky.gov>.

JULIE MIX MCPEAK, Executive Director

TIM LEDONNE, Commissioner

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: December 10, 2007 at 2 p.m.

PUBLIC HEARING. A public hearing on this administrative regulation shall be held on January 22, 2008 at 9 a.m. (EST) at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 15, 2008, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-6088, fax (502) 564-2728.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rate and form filing procedures for use by health insurers when filing new or revised rates and forms.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify basic health benefit requirements for health insurers filing new or revised rates and forms with the Office of Insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. This administrative regulation establishes rate and form filing procedures for health insurers filing new or revised rates and forms for basic health benefit plans.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist insurers by providing forms and clarify procedures for submitting new or revised basic health benefit plan rates and forms for approval by the Office of Insurance.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will clarify several definitions, make changes to comply with the drafting requirements of KRS Chapter 13A, and incorporate a revised version of form HIPMC-RF-25.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify definitions in the original administrative regulation and make technical changes to comply with the drafting requirements of KRS Chapter 13A. Furthermore, this amendment will incorporate a revised version of form HIPMC-RF-25, which was revised to conform with the recent amendment of 806 KAR 17.500.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid

to the effectuation of the Kentucky Insurance Code. This amendment clarifies several definitions, makes technical changes to comply with drafting requirements of KRS Chapter 13A, and incorporates a revised version of the form HIPMC-RF-25.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by clarifying several definitions, making technical changes to comply with drafting requirements of KRS Chapter 13A, and incorporating a revised version of the form HIPMC-RF-25.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects health insurers filing forms and rates for approval by the Office of Insurance. However, since the amendment primarily relates to insurers offering basic health benefit plans, the amendment will only affect fourteen (14) health insurers who have filed forms or rates related to basic health benefit plans.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Since health insurers are currently required to comply with the existing administrative regulation, limited impact is expected. However, since the amendment directly relates to basic health benefit plans, health insurers offering these specific plans will be required to revise and re-file any forms and rates that conflict with the amendment. A total of fourteen (14) health insurers were identified as filing forms or rates for basic health benefit plans in the past, however only two (2) of these insurers have reported individuals covered under basic health benefit plans.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since insurers currently file rate and forms with the Office of Insurance, the office does not anticipate health insurers incurring significant additional costs as a result of the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The resulting benefits are that health insurers will be more informed of basic health benefit plan requirements and in compliance with this administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The Office of Insurance does not anticipate any direct or indirect costs to initially implement the amendment to this administrative regulation.

(b) On a continuing basis: The Office of Insurance does not anticipate any direct or indirect costs to implement the amendment to this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to implement and enforce this administrative regulation is the existing budget of the Office of Insurance.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The Office of Insurance does not anticipate that the implementation of this amendment will require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This amendment to the administrative regulation will clarify the definitions and incorporate a revised form. The amendment will apply equally to all Kentucky licensed health insurers offering basic health benefit plans.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance is promulgating this administrative regulation to clarify the definitions and make conforming amendments to a form incorporated by reference. This clarification will not produce a significant impact to the Office of Insurance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(2) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. This administrative regulation establishes rate and form filing procedures for health insurers to use when filing new or revised rates and forms.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the first year for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for subsequent years for state or local governments.

(c) How much will it cost to administer this program for the first year? The Office of Insurance does not anticipate significant costs relating to the administration of this amendment to an existing administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? The Office of Insurance does not anticipate any significant costs relating to the administration of this administrative regulation during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### ENVIRONMENTAL AND PUBLIC PROTECTION CABINET Department of Public Protection Office of Insurance Division of Health Insurance Policy and Managed Care (Amendment)

806 KAR 17:150. Health benefit plan rate filing requirements.

RELATES TO: KRS 304.3-270, 304.4-010[304.17A-095], 304.17A-095, 304.17A-096, 304.17A-0952, 304.17A-0954, 304.17A-132, 304.17A-134, 304.17A-139, 304.17A-149, 304.17A-410, 304.17A-430, 304.17A-450[304.17A-095, 304.17A-096]

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-095(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 304.17A-095(7) authorizes the executive director to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and establish [to-set-forth] the format of the filings. This administrative regulation establishes the format and procedure [procedures] for the submission of a [filing] health benefit plan [rates-so-the-executive-director-will-have-relevant-information-to-approve-or-disapprove-the] rate filing.

Section 1. Definitions. (1) "Base new business rate" means the



premium rate for each product benefit plan for each class of business, prior to any adjustment [adjustments] for case characteristics or health status.

(2) "Base new business rate change" means:

(a) For a product benefit plan, the percentage change in the base new business rate measured from the first day of the prior rating period to the first day of the proposed rating period; and

(b) For a product within a market segment class of business, equal to the premium weighted average base new business rate change for all of the product benefit plans within that market segment class of business.

(3) "Base premium rate" is defined in KRS 304.17A-005(3).

(4) "Basic health benefit plan" is defined in KRS 304.17A-005(4) [means any plan offered to an individual, a small group, or an employer-organized association that limits coverage to physician, pharmacy, home health, preventive, emergency, and inpatient and outpatient hospital services in accordance with the requirements of KRS 304.17A].

(5) "Class of business" means all or a distinct grouping of small employers or individuals as shown on the records of the small employer or individual insurance carrier.

(6) "Covered person" is defined in KRS 304.17A-500(3).

(7) "Date of filing" means the date the office confirms that the appropriate filing fee and all information required by this administrative regulation have been received by the office.

(8) "Duration" means a policy year of twelve (12) months, measured from the date of issuance of a policy, with each succeeding twelve (12) month period being a new duration.

(9) "Employer-organized association" is defined in KRS 304.17A-0954(1)(c).

(10) "Executive director" is defined in KRS 304.1-050(1) [means the Executive Director of Insurance].

(11)(10) "FFS" means a fee for service product type.

(12)(11) "Guaranteed Acceptance Program" or "GAP" is defined in KRS 304.17A-005(19).

(13)(12) "Health benefit plan" is defined in KRS 304.17A-005(22).

(14)(13) "Health benefit plan region" or "geographic region" means each one (1) of the eight (8) allowable rating regions for health benefit plans identified in HIPMC-R33 [(42)(9)].

(15)(14) "HMO" means a health maintenance organization product type.

(16)(15) "Index rate" is defined in KRS 304.17A-005(25).

(17)(16) "Insurance purchasing outlet" is defined in KRS 304.17A-750(4).

(18)(17) "Large group" is defined in KRS 304.17A-005(30).

(19)(18) "Material change" means any change to a rate filing, except that a change in value of an existing rate factor other than trend shall not be considered a material change.

(20)(19) "Office" is defined in KRS 304.1-050(2) [means the Office of Insurance].

(21)(20) "POS" means a point of service product type.

(22)(21) "PPO" means a preferred provider organization product type.

(23)(22) "Small group" is defined in KRS 304.17A-005(42).

(24)(23) "Target loss ratio" means a loss ratio that an insurer files which projects and guarantees a loss ratio on an annual basis.

Section 2. Scope. (1) A health benefit plan rate filing to which the standards of KRS 304.17A-095 apply, shall include the information required by Sections 3 through 10 of this administrative regulation.

(2) The period of time in which the executive director shall [will] affirmatively approve or disapprove a [the] filing shall not begin until the date of filing.

(3) An [The] insurer shall not market or use the proposed rates [for any purpose] until the date of filing.

(4) A [The] filing and fee shall not be deemed received until the office confirms that:

(a) Information [All information] required by Sections 3 through 10 of this administrative regulation has been received; and

(b) The appropriate fee, as set forth in 806 KAR 4:010, has been paid.

Section 3. Health Benefit Plan Rate Filing Procedures. (1) A health benefit plan rate filing [submission] shall be submitted to the office for [occure if there is]:

(a) A new rate filing; or

(b) A material change to a previously-approved rate filing.

(2) The following shall be included and properly completed in a health benefit plan rate filing submission:

(a) Form HIPMC-R32, the Health Benefit Rate Filing Information Form, which is incorporated by reference in 806 KAR 17:005;

(b) The following filing fee or the domiciliary state fee, whichever is greater:

1. \$100 for an original or new filing; or

2. Fifty (50) dollars for an amendment to a filing;

(c) Form HIPMC-F1, Face Sheet and Verification Form, which is incorporated by reference in 806 KAR 17:005;

(d) Signed actuarial memorandum prepared in accordance with Sections 6 and 7 of this administrative regulation;

(e) An [The] Income and Expense Worksheet, which is incorporated by reference in 806 KAR 17:005;

(f) Except for large groups, Certification Form HIPMC-R34, which is incorporated by reference in 806 KAR 17:005; and

(g) If a rate for a basic health benefit plan is included, Form HIPMC-RF-25, which is incorporated by reference in 806 KAR 17:005 [if a basic health benefit plan is included].

(3) Two (2) copies of all written material shall be submitted to the office.

(4) One (1) copy of all written material shall be submitted to the Kentucky Attorney General's Office by the insurer at the same time as the submission to the office. This shall include:

(a) An amendment;

(b) An update; or

(c) A response to an inquiry from the office.

(5) Two (2) copies of all correspondence with the office or other state agency concerning a filing shall be submitted to the office.

(6) A photocopy of the most recent annual financial report shall be attached to the filing as an exhibit.

Section 4. Filing Format. (1) A separate health benefit plan rate filing shall be submitted for each:

(a) Each market segment as follows:

(a)[1-] Individual;

(b)[2-] Small group;

(c)[3-] Association; and

(d)[4-] Large group; and

(e) Except as otherwise authorized pursuant to KRS 304.17A-0954(2), each:

(b) Each employer-organized association [as defined in KRS 304.17A-0954(1)(c), except as otherwise authorized by employer-organized associations pursuant to KRS 304.17A-0954(2)].

(2) A large group rate filing may include each product type offered as follows

(a) FFS;

(b) PPO,

(c) POS, and

(d) HMO.

(3) A rate filing for a market segment other than large group may be submitted separately for each product type listed in subsection (2) of this section or in the following combinations:

(a) FFS and PPO; or

(b) POS, HMO, and PPO.

Section 5. Employer-organized Association Rate Filings. (1)(a) An employer-organized association rate filing shall include the name of each employer-organized association that generated the rating experience contained in the filing; and

(b) If more than one (1) Each employer-organized association is named in the filing as identified in paragraph (a) of this subsection and each employer-organized association [that] provides the insurer with written permission to have rates based on experience other than its [their] own, the insurer

1. May have the experience of all employer-organized associations named in the filing combined for rate determination; and

2. Shall include proposed Proposed rates for the [a] combi-

nation of associations [shall be contained] in one (1) filing.

(2) Each employer-organized association rate filing shall contain documentation demonstrating that the entity is an employer-organized association pursuant to KRS 304.17A-0954(1)(c).

(3) If an insurer is proposing to begin marketing a health benefit plan to an employer-organized association, a rate filing may be based on the standard plan benefits, including appropriate formulas and rate factors within the limitations outlined in KRS 304.17A-0954. The filing shall include:

(a) Factors for all plans [any plan] to be offered; and  
(b) A detailed description of the methodology for incorporating the actual experience of an employer-organized association in determining rates for that association.

(4) If the insurer receives written permission from an employer-organized association regarding combining experience with other employer-organized associations, the insurer shall submit two (2) copies of the written permission to the executive director at the time of the rate filing. The written permission shall include the following:

(a) A statement giving the insurer permission to rate the employer-organized association on experience other than the employer-organized association's own experience;

(b) Name, address, and telephone number of the employer-organized association giving permission to the insurer;

(c) Name, address, and telephone number of the insurer to which permission is given;

(d) Month, day, and year that permission is given to the insurer; and

(e) Number of eligible association members.

Section 6 Actuarial Memorandum. (1) The actuarial memorandum for each rate filing shall be prepared in accordance with the following:

(a) Actuarial Standard of Practice No. 8, "Regulatory Filings for Rates and Financial Projections for Health Plans (Doc. No. 010, 1990 Edition)", American Academy of Actuaries;

(b) Actuarial Standard of Practice No. 26, "Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans (Doc. No. 052, adopted October, 1996)", American Academy of Actuaries;

(c) Actuarial Standard of Practice No. 31, "Documentation in Health Benefit Plan Ratemaking (Doc. No. 060, adopted October, 1997)", American Academy of Actuaries; and

(d) Actuarial Standard of Practice No. 41, "Actuarial Communication (Doc. No. 086, adopted March, 2002)", American Academy of Actuaries.

(2) The actuarial memorandum for a rate filing, other than a large group rate filing, shall include the following:

(a) Qualifications of the signing actuary;

(b) A statement identifying the date that [when the company will begin using] the proposed rates shall be used;

(c) A discussion of the rate development, which shall include a detailed explanation of the following:

1. The effects of each of the following mandated benefits which [discussion] shall include the percentage cost and actual dollars attributable to the rates and the number of policyholders who are affected.

a. For benefit plans offering pharmacy benefits, coverage for amino acid modified preparations and low-protein modified food products for the treatment of inherited metabolic disorders in accordance with KRS 304.17A-139(4);

b. Hearing aids and related services in accordance with KRS 304.17A-132;

c. Anesthesia and hospital or ambulatory surgical facility services in connection with dental procedures in accordance with KRS 304.17A-149; and

d. Medical and surgical benefits with respect to mastectomies pursuant to KRS 304.17A-134;

2. The claim cost development, which [that] shall include an explanation of the following:

a. Methodology;

b. Assumptions [Any assumption] including the following:

(i) Trend, including [along with] supporting analysis, which supports the trend level selected;

(ii) Benefit [Any benefit] change;

(iii) Utilization [Any utilization] or cost-per-service change;

(iv) Demographic [Any demographic] change;

(v) Change [Any change] in medical management;

(vi) Change [Any change] in provider contracts; and

(vii) Any other assumption used by the actuary in the claim cost development; and

c. Experience by month, including exposures or members, earned premium, paid claims, incurred claims and incurred loss ratio, for the last three (3) years for this product, or for a similar product if this filing is for a new product;

3 a. Development and printout of the following shall be shown by age, gender, and tier combination using the lowest industry factor and the lowest area factor, and separately using the highest industry factor and highest area factor:

(i) Base premium rates;

(ii) Index, [index] rates;

(iii) Corresponding, [~~and corresponding~~] highest premium rates; and

(iv) If offered, any applicable GAP premium rates for the standard plan option, [~~if offered, by age, gender, and tier combination using the lowest industry factor and the lowest area factor, and separately using the highest industry factor and the highest area factor~~].

(b) If the filing contains more than one (1) product type, a development and printout as identified and described in clause a of [the information required by] this subparagraph [shall be provided] for each product type separately.

(c) If the [For any] filing contains [containing] proposed rates for more than one (1) class of business, a development and printout as identified and described in clauses a and b of [the information required in] this subparagraph [shall be provided separately] for each class of business separately;

4. For an insurer [Effective January 1, 2001, for a company] that has existing GAP enrollees:

a. Index rates for the non-GAP classes of business may be set by excluding the experience of the GAP enrollees;

b. Index rates for the GAP class of business shall be set by considering the block of experience for the new GAP class of business and the former class of business which included GAP enrollees; and

c. Rates for the GAP class of business may not exceed 150 percent of the index rates established in clause b of this subparagraph;

5. Factors used [~~Every factor~~] for each case characteristic including age, gender, industry or occupation, and geographic region, with a separate summary of the maximum factor and the minimum factor for each case characteristic.

a. A health benefit plan region other than the eight (8) identified in HIPMC-R33, which is incorporated by reference in 806 KAR 17-005, shall not be used for a geographic region factor adjustment; and

b. Any [~~Include any~~] healthy lifestyle discount factor, if applicable, shall be included and [~~along with~~] an explanation of the determination of that factor, and where that factor is applicable;

6. The anticipated pricing loss ratio, including a detailed justification of [~~the following~~] load factors, including percentages allocated for the:

a. Administrative [~~The percentage allocated for the administrative~~] expense assumption, including [~~with~~] an explanation of:

(i) Any [~~for any~~] change from the factor used for existing rates; and

(ii) How, [~~It shall be explained how~~] these costs are allocated among each benefit plan design, including [~~and attach~~] demonstrative documentation as an exhibit;

b. Commission [~~The percentage allocated for the commission~~] assumption, including [~~with~~] an explanation for any change from the factor used for existing rates;

c. Federal [~~The percentage allocated for federal~~], state, and local government tax assumptions, including [~~with~~] an explanation for a [~~any~~] change from the factor used for existing rates;

d. Investment [~~The percentage allocated for the investment~~] income assumption, including [~~with~~] an explanation for any change from the factor used for existing rates;

e. ~~Profit~~ [The percentage allocated for the profit] and contingency assumption, including [with] an explanation for a [any] change from the factor used for existing rates;

f. ~~Assessments~~ [The percentage allocated for assessments] pursuant to KRS 304.17B-021; and

g. ~~Other~~ [The percentage allocated for any other] identified load factors [factor].

(d) Detailed explanation, including an [with] example[s], of the following:

1. The method for determining a small group composite rate;
2. When a small group composite rate is recalculated; and
3. The group size that is eligible for a composite rate calculation;

(e) Each health benefit plan description and the applicable benefit factor adjustment, or [any] other methods [method] of calculating rates for a different benefit plan if the method is not multiplicative, for each benefit plan to which this filing applies;

(f) Detailed discussion of the manner in which the projected amount of net assessments and payments under KRS 304.17B-021 and 304.17B-023(3) used [is included] in establishing the proposed rates in the filing as required by KRS 304.17A-095;

(g) Information regarding how fees are paid to providers as follows:

1. Justification of fees paid to providers in relation to the rate requested, including any assumption used regarding provider discounts in the rate filing; and

2. Average discount to providers during experience period and average discount for physician payments, hospital payments, laboratory payments, pharmacy payments, mental health payments and other payments for the rate filing period;

(h) If a trend rate is used, include the time period to which the trend applies, not to exceed twelve (12) months, and the applicable annual trend rate and the periodicity of the factor [~~such as monthly or quarterly~~];

(i) Explanation of the anticipated effect of the requested rates on the current policyholders, subscribers, or enrollees;

(j) Information regarding each class of business which shall include:

1. Identification of each class of business;
2. Justification of each separate class of business; and
3. A demonstration that each index rate for the class of business with the highest index rates is within ten (10) percent of the corresponding index rate from the class of business with the lowest index rates, [~~and, effective January 1, 2001,~~] excluding a [any] GAP class of business; and

(k) Prospective certification of the following, which shall be filed as an attachment to the actuarial memorandum for a rate filing other than a large group filing, and signed by the qualified actuary who prepared and signed the actuarial memorandum.

1. That the information is prepared in accordance with American Academy of Actuaries Actuarial Standard of Practice No. 26, Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans, applicable to the following markets:

- a. Individual;
- b. Association; and
- c. Small group [business]; and

2. That [all] the proposed rates meet the requirements of [are in compliance with] KRS 304.17A-0952 or 304.17A-0954, as applicable.

Section 7. Large Group Rate Filings. (1) The actuarial memorandum for a large group rate filing shall include the following information.

(a) The information identified [provided] in Section 6(2)(a), (b), (c) 1, 2, 6, (f), (g), (h) and (i) of this administrative regulation;

(b) Development of rating basis including each adjustment for the following:

1. Age;
2. Gender;
3. Family composition;
4. Benefit plan;
5. Industry;
6. Healthy lifestyle; and

7. Any other adjustment included in the development;

(c) A [Any] formula for new and renewal business including a definition of each term used in the formula;

(d) Credibility criteria used in conjunction with experience rating;

(e) Detailed explanation of a [any] change in the manual rating formula or experience rating formula;

(f) Detailed explanation of a [any] change in factors that would be used in a [any] formula;

(g) Any periodic trend rate applied in the formula;

(h) The composite effect of a [any] change in formula and formula factors; and

(i) Detailed explanation of any trend assumption used in experience rating.

(2) Certification Form HIPMC-R34, incorporated by reference in 806 KAR 17.005, shall not be required for a large group rate filing

Section 8. Guaranteed Loss Ratio Filing for New Products or Products without Credible Experience. (1) A filing accompanied by a guaranteed loss ratio statement shall meet all requirements of KRS 304.17A-095(6) [~~effective January 1, 2001~~]

(2) Individual, [~~market filings and~~] small group, and employer-organized [~~or small-group~~] association market filings shall meet the following requirements regarding guaranteed loss ratios by duration:

(a) The guaranteed loss ratio for the first duration shall not be less than sixty (60) percent of the guaranteed lifetime loss ratio specified in the policy:

1. Expected loss ratios may vary by month within the first duration[.];

2. The average of the loss ratios for all months shall be equal to the guaranteed loss ratio for the first duration;

(b) The guaranteed loss ratio for a specific duration shall not be less than the guaranteed loss ratio for the previous duration;

(c) The guaranteed loss ratio for the third duration shall not be less than the guaranteed lifetime loss ratio identified [specified] in the policy;

(d) The average of the first six (6) guaranteed loss ratios by duration shall not be less than the guaranteed lifetime loss ratio identified [specified] in the policy;

(e) The guaranteed lifetime loss ratio shall not be less than that identified [contained] in KRS 304.17A-095(6)(a)5; and

(f) The guaranteed loss ratios by duration shall be [are] guaranteed for any policy [~~all policies~~] issued under the policy form and shall be identified [specified] in the policy.

(3) A refund shall be calculated as follows:

(a) Refundable premium for any year shall be the sum of the current year's refundable premium for each duration. Each duration's refundable premium shall be calculated by subtracting the three (3) items in subparagraphs 1, 2, and 3 of this paragraph from the current year's earned premium by duration and multiplying the result by the ratio of:

1. Earned premium by duration; and
2. Earned premium by duration minus the items identified in clauses a and b of this subparagraph and any premium related expenses identified in clause c of this subparagraph [~~below~~];

a. State and local premium taxes allocated to that duration;

b. Assessments pursuant to KRS 304.17B-021 allocated to that duration; and

c. The sum of incurred claims, preferred provider organization expenses, case management and utilization review expenses, and reinsurance premiums, minus reinsurance recoveries, allocated to that duration, divided by the guaranteed loss ratio in the policy, for that duration;

(b) If the annual earned premium is less than \$2,500,000, the:

1. Minimum refundable premium shall be equal to the refundable premium multiplied by the ratio of the annual earned premium divided by \$2,500,000;

2. Refund carryover shall be equal to any amount by which the refundable premium exceeds the minimum refundable premium; and

3. Refundable premium in the subsequent year shall be the sum of the refund carryover plus the calculated refundable pre-

mium for the subsequent year;

(c) If the annual earned premium is equal to or greater than \$2,500,000, the minimum refund shall be equal to the refundable premium;

(d) The refund to be paid to a policyholder pursuant to KRS 304.17A-095(6)(d) shall be calculated by dividing the earned premium for that policyholder by the total earned premium for the year, and multiplying that percentage of the aggregate refund of the policy form by the aggregate refund; and

(e) The amount of the refund shall include the computation of interest in accordance with KRS 304.17A-095(6)(d) in determining whether payment shall be made to the policyholder or to the Kentucky State Treasurer.

(4) An audit shall be conducted in accordance with KRS 304.17A-095(6)(b), which shall include the following:

(a) Guaranteed lifetime loss ratio;

(b) Guaranteed loss ratios by duration;

(c) Analysis of prior year estimated items, including uncollected premiums and unpaid claim liabilities, and description of method of allocation by duration;

(d) Earned premium by duration and description of method of allocation by duration;

(e) State premium tax by duration and description of method of allocation by duration;

(f) Local premium tax by duration and description of method of allocation by duration;

(g) Assessments by duration and description of the method of allocation by duration;

(h) Incurred claims by duration and description of method of allocation by duration;

(i) Preferred provider organization expenses and description of method of allocation by duration;

(j) Case management and utilization review expenses and description of method of allocation by duration;

(k) Reinsurance premiums less reinsurance recoveries and description of method of allocation by duration;

(l) Description of reinsurance and identity of reinsurer;

(m) Statement that incurred claims do not include administrative expenses, late payment charges, punitive damages, legal fees or any other related administration expenses;

(n) Statement that incurred claims have been reduced for the full amount of all provider discounts, rebates, coordination of benefits savings, subrogation savings and any other savings;

(o) Statement of refund checks not being issued before approval of the audit;

(p) Calculation of minimum refundable premium, actual refunded premium and refund carryover;

(q) Calculation of percent of earned premium that shall [is to] be refunded;

(r) Method used to calculate a policyholder's actual refund;

(s) Historical experience for the policy form since inception;

(t) Auditor's certification; and

(u) Actuarial certification.

(5) An initial rate filing shall be a formal filing and a subsequent rate filing may be submitted by actuarial certification.

Section 9. Minimum Guaranteed Loss Ratio Requirements for an Amended Policy Form or a Previously Filed Minimum Guaranteed Loss Ratio. (1) If amending a policy form or a previously filed minimum guaranteed loss ratio, a filing accompanied by a guaranteed loss ratio statement shall meet [all] the requirements of KRS 304.17A-095(6).

(2) An insurer shall provide a minimum guaranteed loss ratio statement each time rates are amended for a policy form or if [when] amending a previously filed minimum guaranteed loss ratio. The statement shall identify amounts by which rates are amended and include an actuarial certification verifying that rates continue to meet the requirements of [remain in compliance with] the minimum guaranteed loss ratio most recently filed with the office

(3) The initial rate filing and subsequent statements shall include an actuarial certification which includes information to demonstrate meeting the requirements of [demonstrating compliance with] KRS 304.17A-0952 and Section 6 of this administrative regulation.

(4) The currently approved loss ratio on file with the office under a prior approval process or a minimum guaranteed loss ratio shall be deemed a reasonable loss ratio for any amended policy forms or amended minimum guaranteed loss ratios. Rate filings requesting a change in the previously-approved loss ratio shall require documented evidence to demonstrate increased administrative cost or other evidence that the insurer would not be able to achieve previously approved profitability targets.

(5) If experience is filed by duration pursuant to Section 8(2) of this administrative regulation, a refund shall be calculated in accordance with Section 8(3) of this administrative regulation.

(6) If experience is filed by utilizing a target loss ratio and the actual achieved loss ratio is less than the target loss ratio, a refundable premium shall be determined as follows:

(a) Refundable premium shall be equal to the annual earned premium multiplied by the percentage by which the target loss ratio exceeds the actual achieved loss ratio;

(b) If the annual earned premium is equal to or greater than \$2,500,000, the minimum refundable premium shall be equal to the refundable premium as established in paragraph (a) of this subsection; and

(c) If the annual earned premium is less than \$2,500,000, the:

1. Minimum refundable premium shall be equal to the refundable premium multiplied by the ratio of the annual earned premium divided by \$2,500,000;

2. Refund carryover shall be equal to any amount by which the refundable premium exceeds the minimum refundable premium; and

3. Refundable premium in the subsequent year shall be the sum of the refund carryover plus the calculated refundable premium for the subsequent year;

(d) The refund to be paid to a policyholder pursuant to KRS 304.17A-095(6)(d) shall be calculated by dividing the earned premium for that policyholder by the total earned premium for the year, and multiplying that percentage of the aggregate refund of the policy form by the aggregate refund; and

(e) The amount of the refund shall include the computation of interest in accordance with KRS 304.17A-095(6)(d) in determining whether payment shall be made to the policyholder or to the Kentucky State Treasurer

(7) If experience is filed by duration, an audit shall be conducted in accordance with Section 8(4) of this administrative regulation.

(8) If experience is filed by target loss ratio, an audit shall be conducted in accordance with KRS 304.17A-095(6)(b), which shall include the following:

(a) Guaranteed lifetime loss ratio;

(b) Actual loss ratio;

(c) Analysis of prior year estimated items, including uncollected premiums and unpaid claim liabilities;

(d) Earned premium;

(e) State premium tax;

(f) Local premium tax;

(g) Assessments;

(h) Incurred claims;

(i) Preferred provider organization expenses;

(j) Case management and utilization review expenses;

(k) Reinsurance premiums less reinsurance recoveries;

(l) Description of reinsurance and identity of reinsurer;

(m) Statement that incurred claims do not include administrative expenses, late payment charges, punitive damages, legal fees or any other related administration expenses;

(n) Statement that incurred claims have been reduced for the full amount of all provider discounts, rebates, coordination of benefits savings, subrogation savings and any other savings;

(o) Statement of refund checks not being issued before approval of the audit;

(p) Calculation of minimum refundable premium, actual refunded premium and refund carryover;

(q) Calculation of percent of earned premium that is to be refunded;

(r) Method used to calculate a policyholder's actual refund;

(s) Historical experience for the policy form since inception;

(t) Auditor's certification, and

(u) Actuarial certification.

(9) An initial rate filing shall be a format filing and a subsequent rate filing may be by actuarial certification.

(10) An initial rate filing shall be required for insurers electing to file under a minimum guaranteed loss ratio pursuant to (as provided for in) KRS 304.17A-095(6).

#### Section 10. Amendments to Previously-approved Rate Filings.

(1) For any change that is not a material change, an insurer shall submit an amendment to a rate filing previously approved by the office, which shall include the following:

(a) Identification of the rate file number assigned and [OO-File No.] stated in the Order of Approval received by the insurer from the office for the previously-approved rate filing;

(b) Date of approval of the previously-approved rate filing;

(c) The proposed effective date of the amendment;

(d) A fifty (50) dollar filing fee;

(e) Two (2) copies of a properly completed HIPMC-F1 form, which is incorporated by reference in 806 KAR 17:005;

(f) Two (2) copies of a properly-completed HIPMC-R32 form, which is incorporated by reference in 806 KAR 17:005; and

(g) If the filing is for a basic health benefit, two (2) copies of the completed HIPMC-RF-25 Form, which is incorporated by reference in 806 KAR 17:005.

(2) Each amendment filing shall contain documentation to demonstrate the necessity of the amendment, which shall include the following:

(a) An itemized list of the information to be amended and the reason for the amendment;

(b) A statement identifying the impact of the amendment in relation to benefits and costs on current and future policyholders; and

(c) A statement identifying the impact of the amendment on the insurer.

(3) One (1) copy of the amendment filing and [all] written material relating to the filing shall be submitted to the Kentucky Attorney General's Office by the insurer at the same time as the submission to the office.

(4) The amendment to a previously-approved rate filing shall not be deemed received until the office confirms that the [all] information and [the] fifty (50) dollar filing fee required under [in] this section have been received.

(5) Within sixty (60) days of confirmation of receipt of the required information and fee, the office shall notify the insurer in writing of the acceptance or rejection of the amendment.

(6) The sixty (60) day confirmation time shall not begin until the office confirms that the required information and fee have been received.

#### Section 11. Material Incorporated by Reference: (1) The following material is incorporated by reference:

(a) [HIPMC-R32 (4/05), "Health-Benefit-Plan-Rate-Filing-Information-Form";

(b) HIPMC-F1 (04/05), "Face Sheet and Verification Form";

(c) Actuarial Standard of Practice No. 8, "Regulatory Filings for Rates and Financial Projections for Health Plans (Doc. No. 010, 1990 Edition)", American Academy of Actuaries;

(b)(d) Actuarial Standard of Practice No. 26, "Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans (Doc. No. 052, adopted October, 1996)", American Academy of Actuaries;

(c)(e) Actuarial Standard of Practice No. 31, "Documentation in Health Benefit Plan Ratemaking (Doc. No. 060, adopted October, 1997)", American Academy of Actuaries;

(d)(f) Actuarial Standard of Practice No. 41, "Actuarial Communication (Doc. No. 086, adopted March, 2002)", American Academy of Actuaries;

(g) Income and Expense Worksheet (1998 Edition);

(h) HIPMC-R33 (12/00), "Health-Benefit-Plan-Ratios";

(i) HIPMC-R34 (4/05), "Certification Form"; and

(j) HIPMC-RF-25 (04/05), "Basic Health-Benefit-Plan-Summary Sheet-Form and Rate Filings";]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance,

215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office's internet Web site at <http://doi.ppr.ky.gov>.

JULIE MIX MCPEAK, Executive Director

TIM LEDONNE, Commissioner

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: December 10, 2007 at 2 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on January 22, 2008 at 9 am (EST) at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 15, 2008, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Melea Rivera, Health Policy Specialist, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-6088, fax (502) 564-2728.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for health insurers to use when filing health benefit plan rates.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide health insurers with notice of the requirements for filing new or revised rates for health benefit plans and basic health benefit plans with Office of Insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.17A-095(7) authorizes the executive director to promulgate an administrative regulation to obtain relevant information for health benefit plan and basic health benefit plan rate filings and to set forth the format of the filings. This administrative regulation establishes procedures for health insurers to use when filing health benefit plan and basic health benefit plan rates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist insurers by providing the documents and procedures required to file new or revised health benefit plan and basic health benefit plans rates for approval with the Office of Insurance.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will clarify definitions, make changes to comply with technical requirements of KRS Chapter 13A, and make changes to the incorporated material.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct definitions in the original administrative regulation and to make changes to comply with technical requirements of KRS Chapter 13A. Furthermore, this amendment will remove several documents from the material incorporated by reference as these documents will be incorporated

in a forms regulation for chapter 17 administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.17A-095(7) authorizes the executive director to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and to set forth the format of the filings. This amendment clarifies definitions, revises the regulation to comply with the drafting requirements of KRS Chapter 13A, and makes changes to the incorporated material.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by clarifying definitions, revising the regulation to comply with drafting requirements of KRS Chapter 13A, and making changes to the incorporated material.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all health insurers who file rates for health benefit and basic health benefit plans for approval with the office. However, since the amendment primarily relates to basic health benefit plans, a total of fourteen (14) health insurers who have filed rates related to basic health benefit plans will be impacted.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As health insurers are currently required to comply with the existing administrative regulation, limited impact is expected. However, since the amendment directly relates to the filing of rates for basic health benefit plans, health insurers affected by the amendment will be required to revise any basic health benefit plan rate filings that conflict with the amendment. A total fourteen (14) health insurers have filed rates related to basic health benefit plans.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since health insurers are currently required to file rates in accordance with this regulation, the Kentucky Office of Insurance (KOI) does not anticipate that health insurers will incur significant additional costs as a result of this amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The resulting benefits are that health insurers will be in compliance with this administrative regulation and more clearly understand filing requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: KOI does not anticipate any direct or indirect costs associated with the initial implementation of the amendment to this administrative regulation.

(b) On a continuing basis: KOI does not anticipate any direct or indirect costs associated with the ongoing implementation of the amendment to this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to implement and enforce this administrative regulation is the existing budget of the KOI.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KOI does not anticipate that the implementation of this amendment will require an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative regulation neither establishes fees, nor increases any fees.

(9) TIERING: Is tiering applied? No. This amendment to the administrative regulation will clarify the definitions and incorporate a revised form. The amendment will apply equally to all Kentucky

licensed health insurers.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance is promulgating this administrative regulation to clarify the definitions, make technical changes to comply with KRS Chapter 13, and make changes to the incorporated by reference section. This clarification will not produce a significant impact to the Office of Insurance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(2) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.17A-095(7) authorizes the executive director to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and to set forth the format of the filings. This administrative regulation establishes health benefit plan rate filing procedures for health insurers to use when filing new or revised rates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate minimal revenue for the first year for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate minimal revenue for subsequent years for state or local governments.

(c) How much will it cost to administer this program for the first year? The Office of Insurance should not incur significant costs associated with the administration of this amendment to an existing administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? The Office of Insurance should not incur costs associated with the administration of this administrative regulation during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
Department of Public Protection  
Office of Insurance  
Division of Health Insurance Policy and Managed Care  
(Amendment)

806 KAR 17:500. Basic health benefit plan requirements.

RELATES TO: KRS 304.12-013, 304.14-020, 304.14-120, 304.14-140, 304.14-150, 304.14-180, 304.14-210, 304.12-010, 304.12-020, 304.12-080, 304.12-100, 304.12-215, 304.12-235, 304.12-250, 304.14-010, 304.14-040, 304.14-070, 304.14-290, 304.14-310, 304.14-320, 304.14-360, 304.14-450, 304.14-440, 304.14-450, 304.17-030, 304.17-042, 304.17-310, 304.17-313, 304.17-316, 304.17-3165, 304.17-319, 304.17-010, 304.17-390, 304.17A-005, 304.17A-096, 304.17A-133, 304.17A-135, 304.17A-145, 304.17A-148, 304.17A-149, 304.17A-155, 304.17A-171, 304.17A-250, 304.17A-520, 304.17A-647, 304.18-032, 304.18-



~~0365-304.18-037, 304.18-098, 304.18-0985, 304.32-153, 304.32-1585, 304.32-1591, 304.32-1595, [304.17A-095–304.17A-245, 304.17A-254–304.17A-330, 304.17A-500–304.17A-730, 304.17A-800–304.17A-844, 304.18-010–304.18-033, 304.18-035–304.18-180, 304.32-154, 304.32-165,] 304.32-280, 304.38-1935–[304.32-1585, 304.32-1591–304.32-1595, 304.32-155, 304.38-1933–] 304.38-1937, 304.38-199, 304.38-210, 29 U.S.C. 1185, 29 U.S.C. 1185b, [304.38-199,] 42 U.S.C. 300gg-4-300gg-6, 300gg-51, [and] 300gg-52, 29 C.F.R. 2590.702(b), 2590.711, 2590.712, 2590.702(b)(2)(iii)~~

STATUTORY AUTHORITY: KRS 304.2-110(1)–[304.17A-096]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of [any provision of] the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-096 authorizes an insurer that offers a health benefit plan [insurers] to offer one (1) or more basic health benefit [benefits] plans in Kentucky. This administrative regulation establishes the requirements of a basic health benefit plan.

Section 1. Definitions. (1) "Basic health benefit plan" is defined in KRS 304.17A-005(4) [means any plan offered to an individual, a small group, or an employer-organized association that limits coverage to physician, pharmacy, home health, preventive, emergency, and inpatient and outpatient hospital services in accordance with the requirements of KRS 304.17A].

(2) "Executive director" is defined in KRS 304.1-050(1) [means the executive director of insurance].

(3) "Health benefit plan" is defined in KRS 304.17A-005(22).

(4) "Insurer" is defined in KRS 304.17A-005(27).

(5) "Kentucky insurance code" means the statutes referenced in KRS 304.1-010 and the administrative regulations established in KAR Title 806.

(6) "Office" is defined in KRS 304.1-050(2) [means the Office of Insurance].

(7) [(6)] "State mandated health insurance benefit" means a requirement in the Kentucky insurance code that an insurer:

(a) Provide a specified benefit;

(b) Include a specified coverage; or

(c) Pay, indemnify, or reimburse for a specified medical service [–

(a) Coverage required under the Kentucky Insurance Code, as defined in KRS 304.1-010, to be included under an individual, small group or employer association health benefit plan that includes:

1. Coverage of certain persons;

2. Coverage for specific illnesses, procedures, or types of treatment; or

3. Coverage of care by certain health providers for a covered expense; and

(b) Coverage which does not include benefits or coverage required by federal law or standard provisions or rights required under the Kentucky Insurance Code, as defined in KRS 304.1-010, or other laws of this state to be provided in an individual, small group, or employer-organized association health benefit plan.

Section 2 – Disclosure Statement (1) An insurer that offers a basic health benefit plan shall disclose to all individuals, small employer groups and employer-organized associations prior to the issuance of a policy or certificate of coverage that the basic health benefit plan:

(a) Provides limited coverage;

(b) Includes federally mandated benefits; and

(c) Excludes state-mandated benefits, except for diabetes as provided in KRS 304.17A-148, hospice as provided in KRS 304.17A-250(6) and chiropractic benefits as provided in KRS 304.17A-171.

(2) A disclosure statement as required under KRS 304.17A-097 [disclosing the required information as established in subsection (1) of this section] shall:

(1) [(a)] Accompany or be a part of the application for coverage under a basic health benefit plan;

(2) and

(b) Be included in a basic health benefit plan policy and certi-

cate of coverage; [–]

(3) [A statement of disclosure as established in subsection (2) of this section shall–

(a) Meet the requirements of 806 KAR 14.121; and

(4) [(b)] List the state mandated health insurance benefit [state-mandated benefits] excluded in whole or in part from coverage under the basic health benefit plan.

Section 3. State Mandated Health Insurance Benefits. A basic [Benefits mandated to be included in a] health benefit plan differs form a health benefit plan by the insurer electing to exclude one (1) or more of the following [that may be included] in whole or in part [in a basic health benefit plan include]:

(1) Coverage of amino acid modified preparations and low-protein modified food products for the treatment of inherited metabolic diseases as required under [provided for in] KRS 304.17A-139(4);

(2) [Coverage of health care treatment or services rendered by an ambulatory surgical center as provided for in KRS 304.17-317, 304.18-035, and 304.32-166;

(3) Coverage of the services rendered by a pediatricist as provided for in KRS 304.17-305(3) and 304.18-005(3);

(4) Coverage of dental services provided by a physician as provided for in KRS 304.17-315 and 304.18-097;

(5) Coverage of the treatment of temporomandibular joint disorders, [craniomandibular joint disorders], and craniomandibular jaw disorders as required under [provided for in] KRS 304.17-319, 304.18-0365, 304.32-1585, [and] 304.38-1937, and 806 KAR 17.090;

(3) [(6)] Coverage of mammography for a covered person diagnosed with breast disease as required under KRS 304.17-316(2)(b), 304.17A-133 [screening as provided for in KRS 304.17-316], 304.18-098, 304.32-1591, and 304.38-1935;

(4) [(7)] Coverage of the treatment of breast cancer by high-dose chemotherapy with autologous bone marrow transplantation or stem cell transplantation as required under [provided for in] KRS 304.17-3165, 304.17A-135, 304.18-0985, 304.32-1595, and 304.38-1936;

(5) [(8)] Coverage of services provided by licensed psychologists and licensed clinical social workers as provided for in KRS 304.17-3185, 304.18-0363, 304.32-166, and 304.38-1933;

(9) Coverage of surgical first assisting services of a–

(a) Registered nurse first assistant as provided for in KRS 304.17A-146;

(b) Certified surgical assistant as provided for in KRS 304.17A-147; and

(c) Physician assistant as provided for in KRS 304.17A-1473;

(10) Coverage of the treatment of human immunodeficiency virus infections as required under [provided for in] KRS 304.12-013(5);

(6) [(11)] Coverage of cochlear implants as required under [provided for in] KRS 304.17A-131;

(7) [(12)] Coverage of the treatment of autism in children as required under [provided for in] KRS 304.17A-143, and 806 KAR 17.460;

(8) [(13)] Coverage of telehealth services as required under [provided in] KRS 304.17A-138 and 806 KAR 17.270;

(9) [(14)] Coverage of anesthesia and hospital or facility charges [services] in connection with dental procedures as required under [provided for in] KRS 304.17A-149 and 806 KAR 17.095;

(10) [(15)] Coverage of hearing aids and related services as required under [provided for in] KRS 304.17A-132;

(11) Coverage for dependents as required under KRS 304.17-310, or

(12) Coverage of a second opinion as required under KRS 304.17A-520(4). [(16)] Coverage of nursery care for well newly born children as provided for in KRS 304.17-185, 304.18-033, 304.32-154, and 304.38-198;

(17) Coverage of the diagnosis and treatment of endometriosis and endometritis as provided for in KRS 304.17-3163(1)(b), 304.18-0983(1)(b), 304.32-1593(1)(b), and 304.38-1934(1)(b); and

(18) Coverage of bone density screening as provided for in KRS 304.17-3163(1)(c), 304.18-0983(1)(c), and 304.38-

1934(1)(c)-]

Section 4. Basic Health Benefit Plan Requirements. (1) Except for the ~~exclusion of a [provisions relating to]~~ state mandated health insurance benefit as ~~[benefits]~~ established under KRS 304.17A-096 a basic health benefit plan shall:

(a) ~~Shall~~ comply with the applicable requirements of a health benefit plan as established under Subtitles 12, 14, 17, 17A, 18, 32, and 38 of KRS Chapter 304 and 806 KAR Chapters 12, 14, 17, 18, 32, and 38; and

(b) ~~May include one (1) or more of the benefits listed in Section 3 of this administrative regulation.~~

(2) A basic health benefit plan shall include a health insurance benefit as ~~[benefits]~~ mandated under federal law pursuant to ~~[as required under]~~ KRS 304.17A-096, including a benefit ~~[benefits]~~ for the following:

(a) Women's health and cancer as identified in 29 U.S.C. 1185b, ~~[pursuant to]~~

1-] 42 U.S.C. 300gg-6, ~~or [for a group basic health benefit plan; and~~

2-] 42 U.S.C. 300gg-52; ~~for an individual basic health benefit plan];~~

(b) Parity in the application of limits to mental health benefits as identified in ~~[pursuant to]~~ 42 U.S.C. 300gg-5 and 29 C.F.R. 2590.712 for a group basic health benefit plan; ~~[and]~~

(c) Newborns' and mothers' health as identified in 29 U.S.C. 1185 ~~[pursuant to]~~

1-] 42 U.S.C. 300gg-4, 42 U.S.C. 300gg-51, or 29 C.F.R. 2590.711; ~~[for a basic health benefit plan issued to a group and association; and~~

2-] 42 U.S.C. 300gg-51, for a basic health benefit plan issued to an individual;]

(d) Treatment of an injury that results from an act of domestic violence or a medical condition as identified in 29 C.F.R. 2590.702(b)(2)(iii); and

(e) Nondiscrimination due to genetic information as identified in 29 C.F.R. 2590.702(b)(1) and 29 C.F.R. 2590.702(b)(2)(i)(B).

(3) A basic health benefit plan shall be marketed, distributed, and issued by an insurer in the same manner as a health benefit plan.

Section 5. Annual Reporting Requirements. ~~An [in addition to the reporting requirements established under KRS 304.17A-330, an] insurer offering a basic health benefit plan shall report to the office [of Insurance] annually by April 1, on the form HIPMC-BHP-1, incorporated by reference in 806 KAR 17.005, the following information relating to [specify to] a basic health benefit plan:~~

(1) Total premium by product type and market segment;

(2) Total enrollment by product type, market segment, and county; and

(3) Total number of individuals not covered under health insurance for a period of at least one (1) year prior to coverage under a basic health benefit plan.

~~[Section 6. Incorporation by Reference. (1) Form HIPMC-BHP-1 "Basic Health Benefit Plan Annual Report," Kentucky Office of Insurance, April 2005 edition is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office's internet web site at: <http://doi.ppr.ky.gov/>~~

JULIE MIX MCPEAK, Executive Director  
TIM LEDONNE, Commissioner  
LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: December 10, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2008, at 9 a.m. (EST) at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency

in writing by January 15, 2007, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Office of Insurance, 215 West Main Street; P.O. Box 517; Frankfort, Kentucky 40602, phone (502) 564-6088; fax (502) 564-2728.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements of a basic health benefit plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide insurers with notice of the requirements for offering a basic health benefit plan, including the identification of health benefits that may be excluded and the form of disclosure for individuals to receive adequate notice of a basic health benefit plan coverage limitations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. Specifically, KRS 304.17A-096 authorizes an insurer that offers a health benefit plan to offer a basic health benefit plan, which excludes state mandated health insurance benefits. This administrative regulation establishes the requirements of a basic health benefit plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist insurers by providing the requirements for offering a basic health benefit plan, including the identification of health benefits that may be excluded and the form of disclosure in order for individuals to receive adequate notice of coverage limitations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will correct statutory citations in the relates to and statutory authority paragraphs, clarify several definitions, remove redundant statements from the regulation, clarify which Kentucky state mandated health insurance benefits that may be excluded from a basic health benefit plan, expand the section relating to federal benefits, and make other changes to comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct several inconsistent or incorrect provisions in the original administrative regulation, which are more specifically identified in the response to (2)(a) above.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. Specifically, KRS 304.17A-096 authorizes insurers to offer a basic health benefit plan. This amendment corrects citations in the statutory authority and relates to sections, clarifies several definitions, removes redundant statements from the regulation, clarifies the Kentucky state mandated health insurance benefits which may be excluded from a basic health benefit plan, clarifies provisions relating to

federal benefits, and makes other changes to comply with the drafting requirements of KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by correcting citations in the statutory authority and relates to sections, clarifying several definitions, removing redundant statements from the regulation, clarifying the Kentucky state mandated health insurance benefits which may be excluded from a basic health benefit plan, expanding the section relating to federal benefits, and making other technical changes to comply with drafting requirements of KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation may affect approximately fourteen (14) health insurers who have filed and received approval by the Kentucky Office of Insurance (KOI) for basic health benefit plans rates and forms. Additionally, the regulation may affect the reported 1,445 individuals covered under basic health benefit plans at renewal.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Since health insurers are currently required to comply with the existing administrative regulation, limited impact on health insurers offering basic health benefit plans is expected. However, health insurers will be required to revise any basic health benefit plans that conflict with the amendment. The 1,445 individuals, who are currently covered under a basic health plan, as reported by insurers, will not be required to take any action to comply with this amendment. According to the filings received by the office, few changes, if any, will be made to these individuals' plans at renewal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): KOI requested comments from insurers that might be impacted by this regulation, as well as an estimate of any initial and on-going costs associated with the implementation of the proposed amendment. The insurers neither offered any comments, nor provided cost estimates; therefore KOI does not anticipate that health insurers will incur significant additional costs as a result of this amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The resulting benefits are that health insurers will be in compliance with this administrative regulation and there will be less confusion regarding the interpretation of state or federal benefits that may be excluded under a basic health benefit plan.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: KOI does not anticipate any direct or indirect costs relating to the initial implementation of the amendment to this administrative regulation.

(b) On a continuing basis: KOI does not anticipate any direct or indirect costs relating to the ongoing implementation of the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to implement and enforce this administrative regulation is the existing budget of the KOI.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KOI does not anticipate that the implementation of this amendment will require an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative regulation neither establishes fees, nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? (Explain why or why not): No. This amendment to the administrative regulation will clarify the requirements of a basic health benefit plan and provide additional

statutory references. The amendment will apply equally to all Kentucky licensed health insurers offering basic health benefit plans.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance (KOI) is promulgating this administrative regulation to clarify the requirements of a basic health benefit plan. This clarification will not produce a significant impact to KOI.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(2) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.17A-096 authorizes insurers to offer one (1) or more basic health benefits plans in Kentucky. This administrative regulation establishes the requirements of a basic health benefit plan.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the first year for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for subsequent years for state or local governments.

(c) How much will it cost to administer this program for the first year? KOI does not anticipate significant costs associated with the implementation of this amendment to an existing administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? KOI does not anticipate any costs associated with the implementation of this administrative regulation in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Medicaid Services

##### Division of Administration and Financial Management (Amendment)

#### 907 KAR 1:011. Technical eligibility requirements.

RELATES TO: KRS 205.520, 341.360, 42 C.F.R. 435, 403, 45 C.F.R. 233.100, 8 U.S.C. 1101, 1153(a)(7), 1157, 1158, 1182(d)(5), 1231(b)(3), 1253(h), 1522, 1612, 1613, 1622, 1641, 38 U.S.C. 101, 107, 1101, 1301, 1304, 5303A, 42 U.S.C. 402, 416, 423, 1382c, 1383c, 1395i, 1396a, Pub.L. 109-171

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6481-205.6497, 42 U.S.C. 1396a(a)(10), (n)(2), b(1), d(a)(2)(B), 1397aa, Pub.L. 106-170

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, department for Medicaid Services has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation estab-

lishes the technical eligibility requirements of the Medicaid program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 218A 010(3) [means the Cabinet for Health and Family Services].

(2) "Child" means a person who:  
(a) 1 a. Is under the age of eighteen (18); or  
b. Is under age nineteen (19) if the person is:  
(i) A full-time student in a secondary school or the equivalent level of vocational or technical training; and  
(ii) Expected to complete the program before age nineteen (19);

2. Is not self-supporting;  
3. Is not a member of the Armed Forces of the United States; and

4. If previously emancipated by marriage, has returned to the home of his parents, or to the home of another relative; or

(b) Has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(l)(1).

(3) "Evidence of identity" means

(a) A current state driver's license or state identity document bearing the individual's picture;

(b) A certificate of Indian Blood or other United States American Indian or Alaska Native tribal document; or

(c) For a child who is age sixteen (16) or younger:

1. A school identification card with a photograph;  
2. A military dependent's identification card, if it contains a photograph;

3. A school record that shows the:

a. Date and place of birth, and  
b. Parent or parents' name;  
4. A clinic, doctor, or hospital record showing date of birth;  
5. A daycare or nursery school record showing date and place of birth; or

6. An affidavit signed under penalty of perjury by a parent or guardian attesting to the child's identity.

(4) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death;  
(b) Continued voluntary or involuntary absence;  
(c) Physical or mental incapacity of one (1) parent or step-parent if two (2) parents are in the home; or  
(d) Unemployment of one (1) parent if both parents are in the home

(5) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving supplement security income.

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;  
2. Tax returns;  
3. 1099 forms; or  
4. Proof of quarterly estimated tax;

(d) Meets income standards established in 907 KAR 1 640, Income standards for Medicaid; and

(e) Meets resource standards established in 907 KAR 1 645, Resource standards for Medicaid.

(6) "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;  
(b) Is not married; and  
(c) Has a minor child in his care.

(7) "Satisfactory documentary evidence of citizenship or nationality" means

(a) A United States passport;  
(b) A Certificate of Naturalization (DHS Form N-550 or N-570);  
(c) A Certificate of United States Citizenship (DHS Form N-560 or N-561);

(d) One (1) of the following documents submitted with evidence of identity, if a document identified in paragraphs, (a) through (c) of

this subsection is not available or cannot be obtained:

1. A United States birth certificate;  
2. A Certification of Birth issued by the Department of State (Form DS-1350);

3. A Report of Birth Abroad of a Citizen of the United States (Form FS-240);

4. A Certification of Birth Abroad (FS-545),

5. A United States Citizen Identification Card (DHS Form I-197);

6. An American Indian Card (I-872),

7. A final adoption decree;

8. Evidence of civil service employment by the United States government before June 1976; or

9. An official military record of service showing a United States place of birth;

(e) One (1) of the following documents submitted with evidence of identity if a document identified in paragraphs (a) through (d) of this subsection is not available or cannot be obtained:

1. An extract of a United States hospital record of birth that:

a. Was established at the time of a person's birth;  
b. Was created at least five (5) years before the initial application date; and

c. Indicates a United States place of birth; or

2. A life, health, or other insurance record that:

a. Shows a United States place of birth; and  
b. Was created at least five (5) years before the initial application date; or

(f) One (1) of the following documents submitted with evidence of identity if a document identified in paragraphs (a) through (e) of this subsection is not available or cannot be obtained, the applicant alleges citizenship, and nothing exists to indicate the person is not a citizen:

1. Federal or state census record showing:

a. United States citizenship; or  
b. A United States place of birth;

2. Institutional admission papers that

a. Are from a nursing facility, skilled nursing facility, or other institution;

b. Were created at least five (5) years before the initial application date, and

c. Indicate a United States place of birth;

3. Medical record that:

a. Was created at least five (5) years before the initial application date; and

b. Indicates a United States place of birth unless the application is for a child under age five (5); or

4. Written affidavit by at least two (2) individuals:

a. Of whom one (1) is not related to the applicant,  
b. Who have personal knowledge of the event establishing the applicant's claim of citizenship; and

c. Who provide proof of their own citizenship and identity.

(8) "Qualified alien" means an alien who, at the time the alien applies for or receives Medicaid, meets the requirements established in Section 5(12) of this administrative regulation.

(9) "Veteran" is defined in 38 U.S.C. 101(2).

Section 2. The Categorically Needy. (1) An individual receiving Title IV-E benefits, Supplemental Security Income, or Optional or Mandatory State Supplementation shall be eligible for Medicaid as a categorically-needy individual.

(2) The following classifications of needy persons shall be included in the program as categorically needy and thus eligible for Medicaid participation:

(a) A child in a foster family care or private nonprofit child-caring institution dependent in whole or in part on a governmental or private agency;

(b) A child in a psychiatric hospital, psychiatric residential treatment facility, or medical institution for the mentally retarded;

(c) A pregnant woman;

(d) A child of unemployed parents;

(e) A child in a subsidized adoption dependent in whole or in part on a governmental agency;

(f) A child (but not his parents) who:

1. Would have been financially eligible for Aid to Families with

Dependent Children benefits using the AFDC methodologies in effect on July 16, 1996; and

2. Meets the definition of Section 1(2) of this administrative regulation;

(g) A qualified severely impaired individual as specified in 42 U.S.C. 1396a(a)(10)(A)(i)(II) and 1396d (to the extent the coverage is mandatory in this state);

(h) An individual who loses SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in his child's insurance benefits based on disability as specified in 42 U.S.C. 1383c;

(i) An individual specified in 42 U.S.C. 1383c who:

1. Loses SSI or state supplementation payments as a result of receipt of benefits pursuant to 42 U.S.C. 402(e) or (f);

2. Would be eligible for SSI or SSP except for these benefits; and

3. Is not entitled to hospital insurance benefits under the Medicare program;

(j) A disabled widow, widower, or disabled surviving divorced spouse, who would be eligible for SSI except for entitlement to an old-age, survivors, or disability insurance (OASDI) benefit resulting from a change in the definition of disability;

(k) A child who:

1. Was receiving supplemental security income on August 22, 1996; and

2. Except for the change in definition of childhood disability would continue to receive supplemental security income; or

(l) A person with hemophilia who would be eligible for supplemental security income except he received a settlement in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation".

(3) The classifications of needy persons listed in this subsection shall be included in the program as categorically-needy and thus eligible for Medicaid participation as limited by the provisions of this subsection.

(a) A family which correctly received Medicaid for three (3) of the last six (6) calendar months, and would have been terminated from receipt of AFDC using AFDC methodologies in effect on July 16, 1996 as a result of new or increased collection of child or spousal support, shall be eligible for extended Medicaid coverage for four (4) consecutive calendar months beginning with the first month the family would have been ineligible for AFDC.

(b) A family which would have been terminated from AFDC assistance using the AFDC methodologies in effect on July 16, 1996 because of increased earnings, hours of employment or loss of earnings disregards shall be eligible for up to twelve (12) months of extended Medicaid.

(c) A child born to a woman eligible for and receiving Medicaid shall be eligible for Medicaid as of the date of his birth if:

1. The child:

- a. Has not reached his first birthday; and
- b. Resides in the household of the woman; and

2. The woman remains, or would remain if pregnant, eligible for the assistance.

(d)1. Except as provided in subparagraph 3 of this paragraph, an individual in an institution meeting appropriate patient status criteria who, if not institutionalized, would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income shall be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income.

2. Except as provided in subparagraph 3 of this paragraph, eligibility for a similar hospice participant or similar participant in a waiver project of home and community based services for the mentally retarded or the aged, blind or disabled shall be determined using the method established in subparagraph 1 of this subsection.

3. Eligibility of an institutionalized individual in an intermediate care facility for the mentally retarded and developmentally disabled (ICF/MR/DD) or supports for community living (SCL) for an individual with mental retardation or a developmental disability waiver meeting appropriate patient status criteria whose gross income exceeds 300 percent of the SSI benefit amount shall be determined by comparing the cost of the individual's care to the individual's income.

(e) A woman during pregnancy, and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy, or a child under six (6) years of age, as specified in 42 U.S.C. 1396a(l)(1), shall meet the income requirements for this eligibility group as specified in 907 KAR 1:640, Income standards for Medicaid.

(f) If an eligible child is receiving covered inpatient services on a birthday which will make him ineligible due to age, the child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the child remains otherwise eligible except for age.

(g) A child who has attained six (6) years of age but has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(l)(1) shall meet income requirements established in 907 KAR 1:640, Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act, Section 2(2)(c).

(h) If federal Medicaid-matching funds are available to cover the costs of the program, an optional targeted low-income child as established in 907 KAR 4:020, Section 2(1) who has not attained the age of nineteen (19) years as specified in 42 U.S.C. 1396a(l)(1) shall meet the income requirements established in 907 KAR 1:640, Income standards for Medicaid, Section 2(2)(f)

Section 3. The Medically Needy. (1) An individual, including a child pursuant to Section 2(2)(f) of this administrative regulation or a pregnant woman who has sufficient income to meet the individual's basic maintenance needs, may apply for Medicaid with need determined in accordance with the income and resource standards established in 907 KAR 1:640, Income standards for Medicaid, through 907 KAR 1:665, Special income requirements for hospice and home and community based services (HCBS), if the individual meets:

(a) The income and resource standards of the medically needy program established in 907 KAR 1:640, Income standards for Medicaid and 907 KAR 1:645, Resource standards for Medicaid; and

(b) The technical requirements of the appropriate categorically needy group identified in Section 2 of this administrative regulation.

(2) The medically needy eligible groups shall include:

(a) A pregnant woman during the course of her pregnancy; [and]

(b) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, and who shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated); and

(c) A Medicaid works individual.

Section 4. Qualified Medicare Beneficiaries, Qualified Disabled and Working Individuals, Specified Low-Income Medicare Beneficiaries and Medicare Qualified Individuals (QI). (1) Coverage shall be extended to a qualified Medicare beneficiary as specified in 42 U.S.C. 1396a(a)(10)(E), subject to the income as shown in 907 KAR 1:640, Income standards for Medicaid, and resource limitations shown in 907 KAR 1:645, Resource Standards for Medicaid, and for the scope of benefits specified in 907 KAR 1:006, Coverage of and payments for services for persons eligible for benefits under both Title XIX and XVIII. A qualified Medicare beneficiary shall:

(a) Be eligible for and receiving Medicare Part A benefits;

(b) Be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made; and

(c) Not be eligible for benefits as a qualified Medicare beneficiary eligible individual:

1. Retroactively; or

2. For the month in which the determination was made.

(2) A qualified disabled and working individual as defined in 42 U.S.C. 1396d(s) shall be eligible under Medicaid for payment of his Medicare Part A premiums as established in 907 KAR 1:006, Coverage of and payments for services for persons eligible for benefits under both Title XIX and XVIII.

(3) A specified low-income Medicare beneficiary as defined in

42 U.S.C. 1396a(a)(10)(E)(iii) shall be eligible under Medicaid for payment of the Medicare Part B premiums.

(4) A Medicare qualified individual group 1 (QI-1) as established in 42 U.S.C. 1396a(a)(10)(E)(iv)(I) shall be eligible for payment of all of the Medicare Part B premium.

Section 5. Technical Eligibility Requirements. The technical eligibility factors for a family or individual included as categorically needy under Section 2 of this administrative regulation or as medically needy under Section 3 of this administrative regulation shall be:

(1) A child in foster care, a private institution, psychiatric hospital, psychiatric residential treatment facility, or mental retardation institution shall meet the definition in Section 1(2) of this administrative regulation;

(2) Except as provided by Section 2 of this administrative regulation, a pregnant woman shall be eligible upon medical proof of pregnancy;

(3) At the time of application, unemployment relating to eligibility of both parents and children shall be determined using the following criteria:

(a)1. Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if:

a. The work is intermittent; and

b. The excess is of a temporary nature as evidenced by the fact that the individual

(i) Was under the 100 hour standard for the prior two (2) months; and

(ii) Is expected to be under the standard during the next month;

2. Within twelve (12) months prior to application, a parent received unemployment compensation; or

3. A parent is receiving or has been found ineligible for unemployment compensation; and

(b) A parent shall not have refused suitable employment without good cause as determined in accordance with 45 C.F.R. 233.100(a)(3)(ii);

(4) Subsection (3)(a) of this section shall not apply if a change is made in a Medicaid case or if a case is recertified;

(5) An aged individual shall be at least sixty-five (65) years of age;

(6) A blind individual shall meet the definition of blindness as contained in 42 U.S.C. 416 and 42 U.S.C. 1382c relating to retirement, survivors, and disability insurance (RSDI) or supplemental security income (SSI);

(7) A disabled individual shall meet the definition of permanent and total disability as contained in 42 U.S.C. 423(d) and 42 U.S.C. 1382c(a)(3) relating to RSDI and SSI;

(8) Using AFDC methodologies in effect on July 16, 1996, a family who loses Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to twelve (12) months of extended medical assistance for family members included in the medical assistance unit prior to losing Medicaid eligibility. The extended medical assistance shall be divided into two (2) transitional six (6) month benefit periods. The family shall meet the eligibility and reporting requirements for each transitional benefit period established in this subsection.

(a) The first transitional six (6) month benefit period shall begin with the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996.

1. To be eligible for this transitional benefit period, the family shall:

a. Have correctly received Medicaid assistance in three (3) of the six (6) months immediately preceding the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996;

b. Have a dependent child living in the home; and

c. Report earnings and child care costs no later than the 21st day of the fourth month.

2. If the family no longer has a dependent child living in the home, medical assistance shall be terminated the last day of the month the family no longer includes a dependent child.

3. If the reporting requirements are not met, the Medicaid benefits shall be denied for the second transitional six (6) month

benefit period

(b)1. To continue to receive Medicaid for the optional second transitional six (6) month benefit period, the family shall:

a. Have received medical assistance for the entire first transitional six (6) month period and met the reporting requirements;

b. Have a dependent child living in the home;

c. Have gross income minus child care cost equaling less than 185 percent of the federal poverty income level;

d. Report earnings and child care costs no later than the 21st day of the fourth month, the seventh month, and the tenth month; and

e. During the immediately preceding three (3) months, have a caretaker relative who shall have been

(i) Employed; or

(ii) If unemployed in one (1) or more months, unemployed due to involuntary loss of employment, illness or other good cause established to the satisfaction of the Medicaid program in accordance with paragraph (c) of this subsection.

2. If a family no longer has a dependent child living in the home, Medicaid shall be terminated the last day of the month the family no longer includes a dependent child.

3. If the family's income exceeds the income standard or the family does not meet the reporting requirements, except for good cause established to the satisfaction of the Medicaid program in accordance with paragraph (c) of this subsection, the medical assistance shall be terminated the last day of the appropriate reporting month.

(c) Good cause shall exist under the following circumstances:

1. The specified relative was out-of-town for the reporting month;

2. An immediate family member living in the home was institutionalized or died during the reporting month;

3. The assistance group was the victim of a natural disaster including a flood, storm, earthquake or serious fire, or

4. The assistance group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form;

(9) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.

(a) If a parent is not included in the case, one (1) other caretaker relative may be included to the same extent he would have been eligible in the Aid to Families with Dependent Children program using the AFDC methodology in effect on July 16, 1996.

(b) A caretaker relative shall include:

1. Grandfather;

2. Grandmother;

3. Brother;

4. Sister;

5. Uncle;

6. Aunt;

7. Nephew;

8. Niece;

9. First cousin;

10. A relative of the half-blood;

11. A preceding generation denoted by a prefix of:

a. Grand;

b. Great; or

c. Great-great; or

12. A stepfather, stepmother, stepbrother, or stepsister;

(10) An applicant who is deceased shall have eligibility determined in the same manner as if he were alive, to cover medical expenditures during the terminal illness;

(11) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member is pregnant, the unborn child shall be considered as a family member for budgeting purposes;

(12) The following citizenship and residency requirements shall be applicable:

(a) To be eligible for Medicaid, an applicant or recipient shall be:

1.a. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented



during initial application or if a current recipient, upon next re-determination of continued eligibility. The cabinet:

(i) Shall exempt an applicant or recipient who currently receives Medicare or SSI or who no longer receives Medicare or SSI, but has received one (1) of them in the past, from providing further documentation of citizenship or nationality;

(ii) Shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant's or recipient's behalf; and

(iii) May use a cross match with the cabinet's Office of Vital Statistics to document a birth record or use a cross match with a federal or state governmental, public assistance, law enforcement, or corrections agency's data system to establish identity if the agency establishes and certifies true identity of individuals;

b. Except as provided in paragraph (b) of this subsection, a qualified alien who entered the United States before August 22, 1996 and is:

(i) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

(ii) Granted asylum pursuant to 8 U.S.C. 1158;

(iii) A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

(iv) Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

(v) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

(vi) Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;

(vii) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;

(viii) A battered alien pursuant to 8 U.S.C. 1641(c);

(ix) A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

(x) On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

(xi) The spouse or unmarried dependent child of an individual described in subclause (ix) or (x) of this clause or the unmarried surviving spouse of an individual described in subclause (ix) or (x) of this clause if the marriage fulfills the requirements established in 38 U.S.C. 1304; or

(xii) An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v), or

c. A qualified alien who entered the United States on or after August 22, 1996 and is:

(i) Granted asylum pursuant to 8 U.S.C. 1158,

(ii) A refugee admitted to the United States pursuant to 8 U.S.C. 1157,

(iii) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h) as in effect prior to April 1, 1997 or 8 U.S.C. 1231(b)(3);

(iv) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;

(v) A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

(vi) On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

(vii) The spouse or unmarried dependent child of an individual described in subclause (v) or (vi) of this clause or the unmarried surviving spouse of an individual described in subclause (v) or (vi) of this clause if the marriage fulfills the requirements established in 38 U.S.C. 1304;

(viii) An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v), or

(ix) An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of

Social Security coverage; and

2. A resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403.

(b) A qualified or nonqualified alien shall be eligible for medical assistance under the following circumstances and conditions:

1. The alien shall meet the income, resource and categorical requirements of the Medicaid Program;

2. The alien shall have, or have had within at least one (1) of the three (3) months prior to the month of application, an emergency medical condition not related to an organ transplant procedure, which shall be a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

3. Approval of eligibility shall be for a time limited period, with that period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibility period shall be extended for an appropriate period of time upon presentation to the department of written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period; and

4. The Medicaid benefits to which the alien is entitled shall be limited to the medical care and services (including limited follow-up) necessary for the treatment of the emergency medical condition of the alien;

(13) An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met and the applicant is not enrolled in a managed care partnership.

(a) Except as provided in paragraphs (b) and (c) of this subsection, the effective date of Medicaid shall be the first day of the month of eligibility.

(b) For an individual eligible on the basis of desertion, a period of desertion shall have existed for thirty (30) days, and the effective date of eligibility shall not precede the first day of the month of application.

(c) For an individual eligible on the basis of utilizing his excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met;

(14) Benefits shall be denied to a family for a month in which a parent with whom the child is living is, on the last day of the month, participating in a strike, and the individual's needs shall not be considered in determining eligibility for Medicaid for the family if, on the last day of the month, the individual is participating in a strike. A strike shall include a concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees;

(15) A caretaker relative (but not a child) removed from a family related Medicaid only case due to failure to meet a technical eligibility requirement shall not be eligible for Medicaid as a medically needy individual unless the individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which the individual has been removed, and

(16) A caretaker relative, but not a child, who is ineligible for K-TAP benefits for failure to comply with K-TAP work requirements shall not be eligible for medical assistance unless the individual is eligible as a pregnant woman.

Section 6. Institutional Status. An individual shall not be eligible for Medicaid if the individual is a:

(1) Resident or inmate of a nonmedical public institution except as provided in Section 7 of this administrative regulation;

(2) Patient in a state tuberculosis hospital unless he has reached age sixty-five (65);

(3) Patient in a mental hospital or psychiatric facility unless the individual is:

(a) Under age twenty-one (21),

(b) Under age twenty-two (22) if he was receiving inpatient services on his 21st birthday, or

(c) Sixty-five (65) years of age or over; or

(4) Patient in a nursing facility classified by the Medicaid pro-

gram as an institution for mental diseases, unless the individual has reached age sixty-five (65).

**Section 7. Emergency Shelters.** An individual or family group who is in an emergency shelter for a temporary period of time shall be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions shall be as follows:

- (1) The individual or family group shall:
  - (a) Be a resident of an emergency shelter no more than six (6) months in any nine (9) month period; and
  - (b) Not be in the facility serving a sentence imposed by the court, or awaiting trial; and
- (2) Eligibility for Medicaid shall have existed immediately prior to admittance to the shelter, or it shall exist immediately after leaving the shelter.

**Section 8. Application for Other Benefits.** (1) As a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement, and disability benefit to which he is entitled, unless he can show good cause for not doing so.

(a) Good cause shall be considered to exist if other benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions.

(b) Annuities, pensions, retirement, and disability benefits shall include:

1. Veterans' compensations and pensions;
2. Retirement and survivors disability insurance benefits;
3. Railroad retirement benefits;
4. Unemployment compensation; and
5. Individual retirement accounts.

(2) An applicant or recipient shall not be required to apply for federal benefits if:

- (a) The federal law governing that benefit specifies that the benefit is optional; and
- (b) The applicant or recipient believes that applying for the benefit would be to his disadvantage.

(3) An individual who would be eligible for supplemental security income (SSI) but has not made application shall not be eligible for Medicaid.

**Section 9. Assignment of Rights to Medical Support.** By accepting assistance for or on behalf of a child, a recipient shall be deemed to have made an assignment to the Cabinet for Health and Family Services of any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

**Section 10. Third-party Liability as a Condition of Eligibility.** (1)(a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the Cabinet for Health and Family Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid program unless the individual has good cause for refusing to cooperate.

(b) Good cause for failing to cooperate shall exist if cooperation:

1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;
  2. Is not in a child's best interest because the child was conceived as a result of rape or incest; or
  3. May interfere with adoption considerations or proceedings.
- (2) A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.
- (3) A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

**Section 11. Provision of Social Security Numbers.** (1) Except as provided in subsections (2) and (3) of this section, an applicant or recipient of Medicaid shall provide a social security number as a condition of eligibility.

(2) An individual shall not be denied eligibility or discontinued

from eligibility due to a delay in receipt of a social security number from the Social Security Administration if appropriate application for the number has been made.

(3) If the parent or caretaker relative and the child, unless the child is a deemed eligible newborn, refuses to cooperate with obtaining a social security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failure to meet technical requirements.

SHAWN M. CROUCH, Commissioner  
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 15, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008 at 9 a.m. in the Cafeteria on the first floor of the Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Stuart Owen 502 564-6204 or Lisa Lee 502 564-6890

(1) Provide a brief summary of:  
(a) What this administrative regulation does: This administrative regulation establishes provisions related to technical eligibility requirements for Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to technical eligibility requirements for Medicaid recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to technical eligibility requirements for Medicaid recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to technical eligibility requirements for Medicaid recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment results from a congressional initiative to encourage states to adopt the option of allowing individuals with disabilities to purchase Medicaid coverage that is necessary to enable such individuals to maintain employment. The initiative creates a new Medicaid eligibility group known as Medicaid individuals. Currently, individuals receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) who choose to work, lose Medicaid health benefits because their income exceeds the allowable limit. This initiative will allow individuals with disabilities who choose to work and whose income is less than or equal to 250% of the federal poverty level the opportunity to purchase Medicaid coverage by paying a premium. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they

will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to extend Medicaid coverage to individuals with disabilities who work. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits.

(c) How the amendment conforms to the content of the authorizing statutes. This amendment conforms to the content of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect individuals with disabilities between the ages of sixteen (16) and sixty-five (65) who choose to work and whose income is less than or equal to 250% of the federal poverty level.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Individuals choosing Medicaid coverage via this option must pay a monthly premium in order to receive benefits under this program. In addition, recipients must pay nominal copayments for specified services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Members eligible via the Medicaid works option will be subject to pharmacy and medical copayments that are capped at \$225 each per year per recipient. Therefore, recipients the maximum amount of co-payments per recipient will be \$450 per year. In addition, recipients will be responsible for a monthly premium based on income levels. Premiums range from thirty-five (35) dollars to fifty-five (55) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals eligible via the Medicaid works option will receive pharmacy and medical benefits through the Medicaid program. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially. The Department for Medicaid Services (DMS) anticipates that the system modifications will cost \$36,275

(b) On a continuing basis. DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year; however, this amount will be offset by cost sharing in the

form of premiums totaling \$108,000. Additionally, DMS anticipates that sixty-five (65) percent of recipients expected to enroll for coverage via the Medicaid works option will already be enrolled in another Medicaid Program. Considering all factors, DMS projects total annual costs to be \$211,200, of which \$147,840 would be federal funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act, matching funds from general fund appropriations, and monthly premium payments made by recipients participating in the program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in funding will be necessary as DMS anticipates any increased cost will be absorbed within the existing Medicaid budget.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes monthly premium fees for recipients eligible via the Medicaid works option.

(9) Tiering: Is tiering applied? Tiering is applied to monthly premium amounts. The monthly premium is based on income brackets in order to make the program affordable to individuals in the lower income brackets. Recipients whose monthly income is below 100% of the federal poverty level will pay no premium while recipients above this level will vary with each increase of fifty (50) percent or more.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

The Centers for Medicare and Medicaid Services (CMS) does not mandate that state Medicaid programs cover working individuals who are disabled, however, relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. CMS does not mandate that state Medicaid programs cover working individuals who are disabled; however, relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f) and 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170. Provisions established in this administrative regulation conform to the federal requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, than federal, requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, than federal, requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect an organization that chooses to hire an individual with a disability.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Relevant provisions for states who choose to offer this coverage are estab-

lished in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f) and 42 U.S.C. d(q)(2)(B), and Pub L. 106-170. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that the Medicaid Management Information System (MMIS) modifications associated with this initiative will cost approximately \$36,275.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the enhanced coverage may result in additional cost; however, the measures are necessary to enhance access to health services. DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year. However, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. In addition, research shows that sixty-five (65) percent of individuals expected to participate in this option were already enrolled in another Medicaid Program. DMS anticipates offsets in premiums and, due to the fact that approximately sixty-five (65) percent of recipients in this program would move from another Medicaid program, total annual costs are expected to be \$211,200, of which \$147,840 would be federal funds.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Hospitals and Provider Operations**  
**(Amendment)**

**907 KAR 1:038. Hearing and Vision Program services.**

RELATES TO: KRS 205.520, 334.010(4), (9), 334A.020(5), 334A.030, 42 C.F.R. [440-140], 441.30, 447.53, 457.310, 42 U.S.C. 1396a, b, d, 1396f-6

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), [EO-2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity

presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the hearing services and vision [program] services for which payment shall be made by the Medicaid Program.

Section 1. Definitions. (1) "Audiologist" is defined by KRS 334A.020(5).

(2) "Comprehensive choices" means a benefit plan for an individual who:

(a) Meets the nursing facility patient status criteria established in 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services;

(b) Receives services through either:

1. A nursing facility in accordance with 907 KAR 1.022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services;

2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090, Acquired brain injury services;

3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160, Home and community based waiver services; or

4. The Model Waiver II Program in accordance with 907 KAR 1:595, Model Waiver II services and payments; and

(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R.

(3)(2) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(4)(3) "Department" means the Department for Medicaid Services or its designee.

(5)(4) "Emergency" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 447.53.

(6)(5) "Family choices" means a benefit plan for an individual who:

(a) Is covered pursuant to:

1. 42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u - 1;

2. 42 U.S.C. 1396a(a)(52) and 1396r - 6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);

3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);

4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C);

5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or

6. 42 C.F.R. 457.310; and

(b) Has a designated package code of 2, 3, 4, or 5.

(7)(6) "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:

(a) Caretaker relatives who:

1. Receive K-TAP and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive SSI and.

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1.022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services; or

2. Receive SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services.

(c) Blind individuals who receive SSI and.

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1.022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services.

opmental disability services; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services;

(d) Disabled individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services, including children; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services;

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services;

(f) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services;

(g) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services; or

(h) Pregnant women

(8) "Hearing instrument" is defined by KRS 334.010(4).

(9)(7) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3.130, Medical necessity and clinically appropriate determination basis.

(10)(8) "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 447.53

(11)(9) "Optimum choices" means a benefit plan for an individual who:

(a) Meets the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services;

(b) Receives services through either:

1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1:022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145, Supports for community living services for an individual with mental retardation or a developmental disability; and

(c) Has a designated package code of S, T, U, V, W, X, Z, O, or 1.

(12) "Specialist in hearing instruments" is defined by KRS 334.010(9).

Section 2. Hearing Services. (1) All hearing coverage shall be:

(a) Limited to an individual under age twenty-one (21), and

(b) Provided in accordance with the Hearing Program Manual.

(2) Unless a recipient's health care provider demonstrates that services in excess of the following limitations are medically necessary, reimbursement for services provided by an audiologist licensed pursuant to KRS 334A.030 [a-certified-audiologist] to a recipient shall be limited to:

(a) The following procedures which shall be covered only if a recipient is referred, by a physician, to an audiologist licensed pursuant to KRS 334A.030.

Code	Procedure
92552	Pure Tone audiometry (threshold); air only
92555	Speech audiometry threshold
92556	Speech audiometry threshold; with speech recognition
92557	Comprehensive audiometry eval
92567	Tympanometry
92568	Acoustic reflex testing
92579	Visual reinforcement audiometry
92585	Auditory evoked potentials
92587	Evoked otoacoustic emissions
92588	Complete or diagnostic evaluation (comparison of transient or distortion product otoacoustic emissions at multiple levels and frequency)
92541	Spontaneous nystagmus test
92542	Positional nystagmus test
92543	Caloric vestibular test
92544	Optokinetic nystagmus test
92545	Oscillating tracking test
92546	Sinusoidal vertical axis rotational testing
92547	Use of vertical electrodes

(b) Complete hearing evaluation;

(c)(b) Hearing instrument[aid] evaluation;

(d)1.(e)1- Three (3) follow-up visits within the six (6) month period immediately following fitting of a hearing instrument[aid]; and

2. A follow-up visit shall be related to the proper fit and adjustment of the[that] hearing instrument[aid]; and

(e)1.(e) One (1) additional follow-up visit at least six (6) months following the fitting of a hearing instrument[aid].

(3) Hearing instrument[aid] benefit coverage shall:

(a) Be for a hearing instrument[aid] model recommended by an audiologist licensed pursuant to KRS 334A.030[a-certified-audiologist] if the model is available through a Medicaid-participating specialist in hearing instruments[hearing aid dealer]; and

(b) Not exceed \$800 per ear every thirty-six (36) months; and

(c) Be limited to the following procedures:

Code	Procedure
V5010	Assessment for Hearing Instrument
V5011	Fitting, Orientation, Checking of Hearing instrument
V5014	Repair, Modification of Hearing Instrument
V5015	Hearing Instrument Repair Professional Fee
V5020	Conformity Evaluation
V5030	Hearing Instrument, Monaural, Body Aid Conduction
V5040	Hearing Instrument, Monaural, Body Worn, Bone Conduction
V5050	Hearing Instrument, Monaural, In the Ear Hearing
V5060	Hearing Instrument, Monaural, Behind the Ear Hearing
V5070	Glasses; Air Conduction
V5080	Glasses; Bone Conduction
V5090	Dispensing Fee, Unspecified Hearing Instrument
V5095	Semi-Implantable Middle Ear Hearing Prosthesis
V5100	Hearing Instrument, Bilateral, Body Worn
V5120	Binaural; Body
V5130	Binaural; In the Ear
V5140	Binaural; Behind the Ear
V5150	Binaural; Glasses
V5160	Dispensing Fee, Binaural
V5170	Hearing Instrument, Cros, In the Ear
V5180	Hearing Instrument, Cros, Behind the Ear
V5190	Hearing Instrument, Cros, Glasses
V5200	Dispensing Fee, Cros
V5210	Hearing Instrument, Bicros, In the Ear
V5220	Hearing Instrument, Bicros, Behind the Ear
V5230	Hearing Instrument, Bicros, Glasses

V5240	Dispensing Fee, Bicos
V5241	Dispensing Fee, Monaural Hearing Instrument, Any Type
V5242	Hearing Instrument, Analog, Monaural, CIC (Completely In the Ear Canal)
V5243	Hearing Instrument, Analog, Monaural, ITC (In the Canal)
V5244	Hearing Instrument, Digitally Programmable Analog, Monaural, CIC
V5245	Hearing Instrument, Digitally Programmable Analog, Monaural, ITC
V5246	Hearing Instrument, Digitally Programmable Analog, Monaural, ITE (In the Ear)
V5247	Hearing Instrument, Digitally Programmable Analog, Monaural, BTE (Behind the Ear)
V5248	Hearing Instrument, Analog, Binaural, CIC
V5249	Hearing Instrument, Analog, Binaural, ITC
V5250	Hearing Instrument, Digitally Programmable Analog, Binaural, CIC
V5251	Hearing Instrument, Digitally Programmable Analog, Binaural, ITC
V5252	Hearing Instrument, Digitally Programmable, Binaural, ITE
V5253	Hearing Instrument, Digitally Programmable, Binaural, BTE
V5254	Hearing Instrument, Digital, Monaural, CIC
V5255	Hearing Instrument, Digital, Monaural, ITC
V5256	Hearing Instrument, Digital, Monaural, ITE
V5257	Hearing Instrument, Digital, Monaural, BTE
V5258	Hearing Instrument, Digital, Binaural, CIC
V5259	Hearing Instrument, Digital, Binaural, ITC
V5260	Hearing Instrument, Digital, Binaural, ITE
V5261	Hearing Instrument, Digital, Binaural, BTE
V5262	Hearing Instrument, Disposable, Any Type, Monaural
V5263	Hearing Instrument, Disposable, Any Type, Binaural
V5264	Ear Mold (One (1) Ear Mold Per Year Per Ear and if Medically Necessary)
V5266	Hearing Instrument Battery (Limit of Four (4) Per Aid When Billed With A New Hearing Instrument Or A Replacement Aid)
V5267	Hearing Instrument Supplies, Accessories
V5299	Hearing Service Miscellaneous (May Be Used to Bill Warranty Replacement Hearing Instruments But Shall be Covered Only if Prior Authorized by the Department)

[f]

Section 3. Vision Program Services (1) Vision program coverage shall be limited to:

- (a) A prescription service;
- (b) A repair service made to a frame;
- (c) A diagnostic service provided by:
  - 1. An ophthalmologist; or
  - 2. An optometrist to the extent the optometrist is licensed to perform the service.
- (2) Eyeglass coverage shall:
  - (a) Be limited to a recipient who is under age twenty-one (21); and
  - (b) Not exceed:
    - 1. \$200 per year for a recipient in the global choices benefit package; or
    - 2. \$400 per year for a recipient in the comprehensive choices, family choices, or optimum choices benefit package.
- (3) To be covered:
  - (a) A service designated as a physical medicine and rehabilitation service CPT code shall require prior authorization if provided to a recipient age twenty-one (21) or over;
  - (b) A radiology service specified in 907 KAR 3.005, Physicians' services, Section 5, shall require prior authorization regardless of a recipient's age; [and]

- (c) A service shall be provided in accordance with the Vision Program Manual; and
- (d) A lens shall be polycarbonate and scratch coated.

Section 4. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563, Medicaid covered services hearings and appeals.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560, Medicaid hearings and appeals regarding eligibility.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671, Conditions of Medicaid provider participation; withholding overpayments, administrative appeal process, and sanctions.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Vision Program Manual, October 2007[2006] edition", Department for Medicaid Services; and

(b) "The Hearing Program Manual, October 2007[2006] edition", Department for Medicaid Services

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 20, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008 at 9 a.m. in the Health Services Board Room, on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to hearing and vision services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws that require provision of hearing and vision services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A 050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the limitations established in KRS 205.560(1) for the provision of medically necessary hearing and vision services to Medicaid recipients.



(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to hearing coverage specifies covered audiology codes and procedures as well as covered hearing instrument codes and procedures and updates coverage to current industry practice. Via the amendment, services covered are not expanded; however, the department will cover procedures in audiologists' offices which previously were only covered in physicians' offices. Additionally, the amendment mandates that all lenses be polycarbonate and scratch coated; updates the Vision Program Manual by eliminating archaic policy and forms, renders optometric coverage equivalent to physician coverage where appropriate, and categorizes procedural codes.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify audiology and hearing instrument coverage and to alter coverage in order to ensure necessary care for recipients consistent with current industry practice. The amendment to vision coverage is necessary to reduce provider administrative burden and, thereby, encourage provider participation enhancing recipient access to care.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying audiology and hearing instrument coverage and altering coverage to ensure necessary care for recipients consistent with current industry practice. Additionally, the amendment reduces provider administrative burden and, thereby, encourages provider participation enhancing recipient access to care.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by clarifying audiology and hearing instrument coverage and altering coverage to ensure necessary care for recipients consistent with industry practice. Additionally, the amendment reduces provider administrative burden and, thereby, encourages provider participation enhancing recipient access to care.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect all hearing service providers and vision service providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities are not required to take any action to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed on regulated entities as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Recipients should benefit as lenses must be polycarbonate (more impact resistant) and scratch coated and should see increased provider participation as a result of the reduction of provider administrative burden.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) projects the amendments to the administrative regulation to be budget neutral.

(b) On a continuing basis: DMS projects the amendments to the administrative regulation to be budget neutral.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current

fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering is not applied.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No local government entity is affected; however, the Department for Medicaid Services is affected.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. State laws authorizing this action include 194A.030(2), 194A.050(1), 205.520(3). Federal regulations authorizing this action include 42 C.F.R. 433.56, 42 C.F.R. 441.10, and 42 U.S.C. 1396d(a).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services projects the amendment to be budget neutral.

(d) How much will it cost to administer this program for subsequent years? The DMS projects the amendment to be budget neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

#### CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Physicians and Specialty Services

(Amendment)

907 KAR 1:039. Payments for hearing services.

RELATES TO: KRS 205.520, 334.010, 334.040, 334.200, 42 C.F.R. 447.200, 204

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3); 1998 Ky. Acts ch. 616, EO-2004-726

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the program of Medical Assistance. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the department[cabinet] for

hearing services.

Section 1. Definitions (1) "Audiologist" is defined by KRS 334A.020(5).

(2) "Comparable aid" means an aid falling within the general classifications of fitting type, for example, body, behind-the-ear, in-the-ear, or eyeglasses.

(3) "Department" means the Department for Medicaid Services.

(4) "Hearing instrument" is defined by KRS 334.010(4).

(5) "Specialist in hearing instruments" is defined by KRS 334.010(9).

Section 2. Reimbursement to an Audiologist. (1) The department[cabinet] shall reimburse a participating audiologist at usual and customary actual billed charges up to the fixed upper limit per procedure established by the department[cabinet] at sixty-five (65) percent of the median billed charge using 1989 calendar year billed charges.

(2) If there is no median available for a procedure, or the department[cabinet] determines that available data relating to the median for a procedure is unreliable, the department[cabinet] shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service.

Section 3. Hearing Instrument Reimbursement (1) If a manufacturer of a hearing instrument billed to the department submits a price schedule which includes the manufacturer's invoice price of the hearing instrument, the department shall reimburse the participating specialist in hearing instruments at the lesser of:

(a) The manufacturer's invoice price plus a professional fee of \$150 for the first (one (1) ear) hearing instrument and fifty (50) dollars for the second (two (2) ears or binaural) hearing instrument if two (2) hearing instruments are dispensed on the same date;

(b) The actual specialist in hearing instruments' cost plus a professional fee of \$150 for the first (one (1) ear) hearing instrument and fifty (50) dollars for the second (two (2) ears or binaural) hearing instrument when two (2) hearing instruments are dispensed on the same date; or

(c) The suggested retail price submitted by the manufacturer for the hearing instrument.

(2) If a manufacturer of a hearing instrument billed to the department has not submitted a price schedule which includes the manufacturer's invoice price for the hearing instrument, the department shall reimburse the participating specialist in hearing instruments at the lesser of:

(a) The lowest price submitted for a comparable hearing aid plus a professional fee of \$150 for the first (one (1) ear) hearing instrument and fifty (50) dollars for the second (two (2) ears or binaural) hearing instrument when two (2) hearing instruments are dispensed on the same date;

(b) The actual specialist in hearing instruments' cost plus a professional fee of \$150 for the first (one (1) ear) hearing instrument and fifty (50) dollars for the second (two (2) ears or binaural) hearing instrument if two (2) hearing instruments are dispensed on the same date; or

(c) The lowest suggested retail price submitted for a comparable aid.

Section 3. Replacement Cord Reimbursement. The department shall reimburse for a replacement cord;

(1) At the specialist in hearing instruments' cost plus a professional fee set; and

(2) Not to exceed the fixed upper limit.

Section 4. Hearing Instrument Repair Reimbursement The department shall reimburse a specialist in hearing instruments for a hearing instrument repair:

(1) On the basis of the manufacturer's charge for repair or replacement of parts;

(2) Plus the specialist in hearing instruments' cost for postage and insurance relative to the repair;

(3) Plus a professional fee; and

(4) Not to exceed the fixed upper limit.

Section 5. Appeals A provider may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671. Provider enrollment, disclosure, and documentation for Medicaid participation. [(3) An audiologist shall be entitled to the same dispensing fee for a hearing aid as shown in Section 2 of this administrative regulation.

(4) Fixed upper limits not determined in accordance with the principle shown in this section of the administrative regulation due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.

Section 2. Hearing Aid Dealers.

(1) If the manufacturer of the hearing aid billed to the program has submitted a dealer price schedule which includes that hearing aid, the cabinet shall reimburse the participating hearing aid dealer at the lesser of:

(a) That dealer price in the price schedule plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date;

(b) The actual dealer cost plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date; or

(c) The suggested retail price submitted by the manufacturer for that aid.

(2) If the manufacturer of the hearing aid billed to the program has not submitted a dealer price schedule which includes that hearing aid, the cabinet shall reimburse the participating hearing aid dealer at the lesser of:

(a) The lowest dealer price submitted for a comparable hearing aid plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date;

(b) The actual dealer cost plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date; or

(c) The lowest suggested retail price submitted for a comparable aid. A comparable aid is defined as an aid falling within the general classifications of fitting type, i.e., body, behind-the-ear, in-the-ear, eyeglasses.

Section 3. Cords The cabinet shall make payment for a replacement cord at the dealer's cost, plus a professional fee set at the fixed upper limit.

Section 4. Hearing Aid Repairs The cabinet shall reimburse a hearing aid dealer for a hearing aid repair on the basis of the manufacturer's charge for repair or replacement of parts, plus the dealer's cost for postage and insurance relative to the repair, plus a professional fee set at the fixed upper limit.]

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 20, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008, at 9 a.m. in the Cabinet for Health and Family Services Health Services Board Room, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502)

564-7905, fax (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-6204

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to hearing reimbursement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws that require provision of hearing services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes. This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the limitations established in KRS 205.560(1) for the provision of medically necessary hearing services to Medicaid recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment increases dispensing fees as follows: the hearing aid dispensing fee is increased for the first hearing aid (one ear) from seventy-five (75) dollars to \$150 and for the second hearing aid (two ears or binaural) from twenty-five (25) dollars to fifty (50) dollars. Additionally, the amendment contains formatting and wording changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to increase provider reimbursement to encourage provider participation and in turn enhance recipient access to necessary care. Additionally, the amendment contains formatting and wording changes to comply with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by increasing provider reimbursement to encourage provider participation and in turn enhance recipient access to necessary care. Additionally, the amendment contains formatting and wording changes to comply with KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by increasing provider reimbursement to encourage provider participation and in turn enhance recipient access to necessary care. Additionally, the amendment contains formatting and wording changes to comply with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect all hearing aid providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities are not required to take any action to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed on regulated entities as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Providers will benefit from increased dispensing fees which in turn should encourage more provider participation and; thus, enhance recipient access to care. Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) projects that the amendments to this administrative regulation will cost approximately \$12,800 (\$8,900 federal funds and \$3,900 state funds) annually.

(b) On a continuing basis: DMS projects that the amendments to this administrative regulation will cost approximately \$12,800 (\$8,900 federal funds and \$3,900 state funds) annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? This administrative regulation increases dispensing fees which are tiered due to the nature of the item being dispensed.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No local government entity is affected; however, the Department for Medicaid Services is affected.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. State laws authorizing this action include 194A.030(2), 194A.050(1), 205.520(3). Federal regulations authorizing this action include 42 C.F.R. 447.200 and 42 C.F.R. 447.204.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services projects that the amendments to this administrative regulation will cost approximately \$12,800 (\$8,900 federal funds and \$3,900 state funds) annually.

(d) How much will it cost to administer this program for subsequent years? DMS projects that the amendments to this administrative regulation will cost approximately \$12,800 (\$8,900 federal funds and \$3,900 state funds) annually.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

## CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Long Term Care and Community Alternatives  
(Amendment)

907 KAR 1:044. Community mental health center services.

RELATES TO: RELATES TO: KRS 194A.060, 205.520(3),  
205.845(9), 422.317, 434.840-434.860, 42 C.F.R. 415.208,

431.52, 431 Subpart F

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 210.450, 42 U.S.C. 1396a-d,

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions for community mental health center (CMHC) services.

**Section 1. Definitions** (1) "Community mental health center" means a facility which meets the community mental health center requirements established in 902 KAR 20:091. Facilities specifications, operation and services; community mental health center.

(2) "Department" means the Department for Medicaid Services or its designee.

**Section 2. Requirements for a Psychiatric Nurse.** [(4) Except as provided in subsection (2) of this section, for the purpose of providing Medicaid Program reimbursable services.] A registered nurse employed by a participating community mental health center shall be considered a psychiatric or mental health nurse if he or she:

(1) Possesses a master of science in nursing with a specialty in psychiatric or mental health nursing;

(2) Is a graduate of a four (4) year nursing educational program with:

(a) A bachelor of science in nursing; and

(b) Possesses at least one (1) year of experience in a mental health setting;

(3) Is a graduate of a three (3) year nursing educational program and possesses at least two (2) years of experience in a mental health setting;

(4) Is a graduate of a two (2) year nursing educational program with:

(a) An associate degree in nursing; and

(b) At least three (3) years of experience in a mental health setting; or

(5) Possesses any level of education with American Nursing Association certification as a psychiatric and mental health nurse, [the nurse meets any of the following criteria:

(a) Master of Science in Nursing (MSN) with specialty in psychiatric/mental health nursing, with additional experience not required;

(b) Graduate of a four (4) year nursing educational program, with a Bachelor of Science in Nursing (BSN) and with a minimum of one (1) year of experience in a mental health setting;

(c) Graduate of a three (3) year nursing educational program (diploma graduate), and with a minimum of two (2) years of experience in a mental health setting;

(d) Graduate of a two (2) year nursing educational program, with an Associate Degree in Nursing (ADN) and with a minimum of three (3) years of experience in a mental health setting; or

(e) Any level of education with American Nursing Association (ANA) certification as a psychiatric and mental health nurse.

(2) A registered nurse employed by a participating mental health center in Kentucky on June 30, 1981 shall be considered a psychiatric nurse if their employment with the center continues, for the purpose of providing Medicaid Program reimbursable services.]

**Section 3[2] Community Mental Health Manual.** The Community Mental Health Manual specifies[shall specify] the conditions for participation, services covered, and limitations for the community mental health center services component of the Medicaid Program.

**Section 4[3] Covered Services.** Inpatient services, outpatient services, therapeutic rehabilitation services, emergency services and personal care home services shall be covered if:

(1) Provided by a community mental health center;

(2) Provided in accordance with this administrative regulation and the Community Mental Health Manual; and

(3) They meet all applicable departmental requirements. [The following services provided by a participating community mental health center shall be covered, if provided in accordance with this administrative regulation and the Community Mental Health Manual, and if they meet all applicable departmental requirements:

(1) Inpatient services;

(2) Outpatient services;

(3) Therapeutic rehabilitation services;

(4) Emergency services; and

(5) Personal care home services.]

**Section 5[4] Electronic Documents and Signatures** (1) The creation, transmission, storage, or other use of electronic signatures and documents shall comply with requirements established in KRS 369.101 to 369.120 and all applicable state and federal laws and regulations

(2) A CMHC [provider] choosing to utilize electronic signatures shall:

(a) Develop and implement a written security policy which shall:

1. Be complied with by each of the provider's employees, officers, agents, and contractors; and

2. Stipulate which individuals have access to which electronic signatures and password authorization;

(b) Ensure that electronic signatures are created, transmitted and stored securely; and

(c) Develop a consent form which shall:

1. Be completed and executed by each individual utilizing an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her[their] responsibility in allowing the use of the electronic signature.

**Section 6[5] Appeal Rights.** (1) An appeal of a department decision regarding a Medicaid recipient[member] based upon an application of this administrative regulation shall be in accordance with 907 KAR 1.563.

(2) An appeal of a department decision regarding a Medicaid recipient[member] based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

**Section 7[6] Incorporation by Reference.** (1) The "Community Mental Health Manual, June 2007, [April 2006] edition", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4 30 p.m.

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 26, 2007

FILED WITH LRC: November 26, 2007 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed

administrative regulation until close of business January 31, 2008. Send written notification of Intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-6204 or Shelley Adams (502) 564-5560

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to community mental health center services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to community mental health center services

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 210.450 and other authorizing statutes by establishing provisions related to community mental health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 210.450 and other authorizing statutes by establishing provisions related to community mental health services

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment eliminates the requirement, via revision to the Community Mental Health Manual, that a psychiatrist sign every recipient treatment plan.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enable psychiatrists to spend more time providing direct face-to-face therapy with recipients rather than being sidetracked by having to sign every treatment plan.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by enabling psychiatrists to focus more on care rather than administration.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by enabling psychiatrists to focus more on care rather than administration.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect community mental health center service recipients and all fourteen community mental health centers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The amendment eliminates the requirement that a psychiatrist sign every treatment plan; thus reducing psychiatrists' administrative burden and enabling them to spend more time providing direct face-to-face therapy with recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). As a result of the amendment, psychiatrists will be enabled to spend more time providing direct therapy with recipients which in turn should benefit recipients.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates no cost as a result of the amendment.

(b) On a continuing basis: DMS anticipates no cost as a result of the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary as a result of the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment neither establishes nor increases any fee.

(9) Tiering: is tiering applied? Tiering is not applied.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect community mental health centers.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by 194A 030(2), 194A 050(1), 205.520(3), 210.450, and 42 U.S.C. 1396a-d.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates no revenue will be generated by the amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years. DMS anticipates no revenue will be generated by the amendment.

(c) How much will it cost to administer this program for the first year? DMS anticipates no cost as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost as a result of the amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

## CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Hospital and Provider Operations (Amendment)

907 KAR 1:054. Primary care center and federally-qualified health center services.

RELATES TO: KRS 205.520, 310.005, 314.011, 335.100, 42 C.F.R. 400.203, 405.2401, 2412-2416, 2446, 2448, 2450, 2452, 441 Subpart E and F, 447.53, 42 U.S.C. 1395x(aa), 42 U.S.C. 1396d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3); [EG-2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EG-2004-726, effective July 9, 2004 reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for

Medicaid Services has responsibility to administer the Medicaid Program [of Medical Assistance in accordance with Title XIX of the Social Security Act]. KRS 205.520(3) authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. [Primary care centers (as defined by the Health Certificate of Need and Licensure Board) and federally-qualified health centers represent an opportunity for the provision of comprehensive medical services to the indigent citizenry of Kentucky.] This administrative regulation establishes [–therefore, sets forth] the provisions relating to primary care center and federally-qualified health center services for which payment shall be made by the Medicaid Program on [Medical Assistance Program in] behalf of both the categorically needy and medically needy.

Section 1. (1) "Advanced registered nurse practitioner" is defined by KRS 314.011(7).

(2) "Clinical pharmacist" means a licensed pharmacist whose scope of service includes taking medication histories, monitoring drug use, contributing to drug therapy, drug selection, patient counseling, administering drug programs, or surveillance for adverse reactions and drug interactions.

(3) "Clinical psychologist" means a doctorate level psychologist who is licensed in accordance with KRS 319.050.

(4) "Department" means the Department for Medicaid Services or its designee.

(5) "Emergency condition" means a condition or situation requiring an emergency service pursuant to 42 C.F.R. 447.53.

(6) "Federally-qualified health center" or "FQHC" is defined by 42 U.S.C. 1396d(l)(2)(B).

(7) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(8) "Nurse midwife" is defined by 42 C.F.R. 405.2401(b).

(9) "Nutritionist" is defined by KRS 310.005(4).

(10) "Physician" is defined by 42 C.F.R. 405.2401(b).

(11) "Physician assistant" is defined by 42 C.F.R. 405.2401(b).

(12) "Primary care center" or "PCC" means an entity meeting the primary care center requirements established in 902 KAR 20.058.

(13) "State plan" is defined by 42 C.F.R. 400.203.

Section 2. Primary Care Center Covered Services. (1) The department shall cover, and a primary care center shall provide, the following services:

(a) Medical diagnostic or treatment services provided by a physician, advanced registered nurse practitioner, or a physician assistant if licensed under state authority;

(b) Treatment of injuries or minor trauma;

(c) Prenatal or postnatal care;

(d) Preventive health services including well-baby care, well-child care, immunization, or other preventive care;

(e) Referral services designed to ensure the referral to and acceptance by an appropriate medical resource when services necessary to the health of the patient are not provided directly by the center; and

(f) Health education, including distribution of written material, provided by appropriate personnel to local school systems, civic organizations, or other concerned local groups.

(2) The department shall cover the following services and a primary care center shall provide at least two (2) of the following services:

(a) Dental services;

(b) Optometric services;

(c) Family planning services;

1. Listed in 907 KAR 1.048, Family planning services, Section 1; and

2. As limited in 907 KAR 1.048, Family planning services, Section 2;

(d) Home health services listed and as limited in 907 KAR 1.030, Home health agency services;

(e) Social services counseling;

(f) Pharmacy services which shall meet the coverage criteria

established in 907 KAR 1.019, Outpatient Pharmacy Program;

(g) Nutritional services provided by a nutritionist, including individual counseling relating to nutritional problems or nutritional education or group nutritional services; or

(h) Nurse midwifery services which shall be provided:

1. As a program including prenatal services to expectant mothers, delivery or postnatal services; and

2. By a nurse midwife.

(3) The department shall cover, and a primary care center may, but is not required to provide, the following services:

(a) Excluding institutional care, other state plan services;

(b) Holding or observation accommodations;

(c) Outreach services provided as a package structured to identify health care needs in the service area;

(d) Clinical pharmacist services;

(e) Behavioral health services provided by a clinical psychologist, licensed clinical social worker, or advanced registered nurse practitioner within the provider's legally authorized scope of service;

(f) Services or supplies furnished as an incident to services provided by a physician, physician assistant, advanced registered nurse practitioner, or nurse midwife if the service or supply meets the criteria established in 42 C.F.R. 405.2413 or 42 C.F.R. 405.2415; or

(g) Services or supplies incident to a clinical psychologist's or licensed clinical social worker's behavioral health services if the service or supply meets the criteria established in 42 C.F.R.

Section 3. Federally-qualified Health Center Covered Services. A federally-qualified health center shall provide:

(1) Federally-qualified health center services pursuant to 42 U.S.C. 1395x(a)(3);

(2) Federally-qualified health center services pursuant to 42 U.S.C. 1396d(l)(2)(A);

(3) Other Medicaid-covered ambulatory outpatient services established in the state plan; or

(4) Any combination of the services described in subsections (1), (2), and (3) of this section.

Section 4. Drugs for Specified Immunizations. The Cabinet for Health and Family Services shall provide free, upon request, drugs necessary for the following immunizations:

(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine live (MMR);

(3) Poliovirus vaccine, live, oral, any type (OPV); or

(4) Hemophilus B conjugate vaccine (HBCV).

Section 5. Coverage Limits. (1)(a) Pharmacy service coverage, except as established in subsection (2) of this section, shall be limited to drugs covered pursuant to 907 KAR 1.019, Outpatient pharmacy program.

(b) A drug or biological not covered through the department's pharmacy program shall be covered if necessary for treatment of an emergency condition.

(2) Laboratory service coverage shall be limited to:

(a) Services provided directly by a PCC or FQHC; or

(b) If purchased, other laboratory services covered pursuant to 907 KAR 1.028, Other laboratory and x-ray services.

(3) Dental service coverage shall be limited to dental service coverage pursuant to 907 KAR 1.026, Dental services.

(4) Vision service coverage shall be limited to vision service coverage pursuant to 907 KAR 1.038, Hearing and Vision Program services.

(5) Audiology service coverage shall be limited to hearing service coverage pursuant to 907 KAR 1.038, Hearing and vision program services.

(6) An abortion or sterilization service shall be allowed in accordance with 42 C.F.R. 441, Subpart E or Subpart F, and covered within the scope and limitations of federal law, federal regulations, and state law.

(7) Durable medical good and prosthetic coverage shall be limited to durable medical good or prosthetic coverage pursuant to 907 KAR 1.479, Durable medical equipment covered benefits and reimbursement or 907 KAR 1.030, Home health agency services



and reimbursement.

(8) A holding or observation accommodation shall be covered;

(a) For no more than twenty-four (24) hours; and

(b) If:

1. The recipient's medical record:

a. Documents the appropriateness of the holding or observation accommodation; and

b. Contains a statement of conditions observed and treatment rendered during the holding time;

2. A physician:

a. Determines that the holding or observation accommodation is necessary; and

b. Is on call at all times when a recipient is held beyond the regularly scheduled hours of the center; and

3. A licensed nurse is on duty during the time the recipient patient remains beyond regularly-scheduled hours.

(9) A radiology procedure shall be covered if provided by a licensed practitioner of the healing arts or by an individual holding a valid certificate to operate sources of radiation.

Section 6. Noncovered Services. The following services shall not be covered as PCC or FQHC services:

(1) Services provided in a hospital as defined in 42 U.S.C. 1395x(e); or

(2) Institutional services;

(3) Housekeeping, babysitting, or other similar homemaker services; or

(4) Services which are not provided in accordance with restrictions imposed by law or administrative regulation. [As used in this administrative regulation, the following definitions apply: (1) Basic services. These services which shall be provided by the primary care center for it to be considered a primary care center by the cabinet;

(2) Supplemental services. Those specified services which are in addition to the basic or required range of services, and for which the cabinet shall make payment when appropriately provided by the primary care center;

(3) Element. A specific subprogram within the Medical Assistance Program, for example, dental services is a subprogram or element of the Medical Assistance Program;

(4) Requirements for program participation. Those requirements of law or administrative regulation generally applicable throughout the Medical Assistance Program and with which all medical services providers shall comply in order to participate and receive reimbursement as a provider of services to eligible medical assistance recipients.]

Section 2—Requirement for Participation. Each primary care center shall be required to meet the standards set for certification by the Commission on Health Economics Control in Kentucky, and shall not receive reimbursement for services as a primary care center provider until the cabinet determines that the standards are met and that the provider complies with all requirements for program participation. Each federally required health center shall be required to meet appropriate licensure standards (whether as a primary care center or other health facility) and shall in addition be receiving a grant under section 329, 330, or 340 of the United States Public Health Service Act or be determined by the Secretary, United States Department of Health and Human Services to meet the requirements for receiving a grant under section 329, 330, or 340 of the United States Public Health Service Act.

Section 3—Covered Services. Each primary care center shall provide directly to eligible program recipients on a regular, full-time basis the basic services as specified in subsection (1) of this section, and may provide one or more of the supplemental services. Each federally qualified health center shall be entitled to provide the services described in the Social Security Act at Section 1861(aa)(1) and any other ambulatory services offered on an outpatient basis which are included in the Medicaid state plan.

(1) Basic services which shall be provided by primary care centers:

(a) Medical diagnostic and treatment services for all age groups, as provided by a physician(s), nurse practitioner(s), or physician assistant(s) if licensed under state authority;

(b) Treatment of injuries and minor trauma;

(c) Prenatal and postnatal care;

(d) A program of preventive health services which shall include well-baby care, well-child care, and immunization, and which may include other types of preventive care;

(e) Referral services designed to ensure the referral to and acceptance by an appropriate medical resource when services necessary to the health of the patient are not provided directly by the center;

(f) Health education services. These services shall provide as a minimum appropriate personnel to present, on request, information on general health care to local school systems, civic organizations and other concerned local groups. Services are to include distribution of written material on pertinent health subjects;

(g) The primary care center shall provide directly at least two (2) of the following additional professional services:

1. Dentist;

2. Optometrist;

3. Family planning services. These services shall be provided as a package which shall include those services required under the family planning element of the Medical Assistance Program;

4. Home health services. These services shall include the same services as provided under the home health element of the Medical Assistance Program;

5. Social services counseling. This shall include, as a minimum, information and referral services. Intensive counseling is to be limited to crisis situations and health related problems. Individuals with other identified counseling needs are to be referred to appropriate social service agencies. These services shall be performed by a licensed, graduate, or certified social worker;

6. Pharmacy services. These services shall meet the standards of the pharmacy component of the Medical Assistance Program;

7. Nutritional services. These services shall include as a minimum individual counseling relating to nutritional problems or nutritional education. Group nutritional services may also be provided. These services shall be performed by a professional nutritionist; and

8. Nurse midwifery services. These services shall be provided as a program which is to include prenatal services to expectant mothers, as well as delivery and postnatal services. These services shall be performed by a certified nurse-midwife.

(2) Supplemental services which may be provided by primary care centers:

(a) Other services (excluding institutional care) within the scope of the Medical Assistance Program;

(b) Holding/observation accommodations;

(c) Any of the types of service in subsection (1)(g) of this section, which are not provided as basic services;

(d) Outreach services. These services shall be provided as a package structured to identify health care needs in the service area; and

(e) Clinical pharmacist. A clinical pharmacist is a licensed pharmacist whose services include taking medication histories, monitoring drug use, contributing to drug therapy, drug selection, patient counseling, administering drug programs, and surveillance for adverse reactions and drug interactions.

Section 4—Drugs for Specified Immunizations. Effective with regard to services provided on or after October 1, 1988, primary care centers and, effective April 1, 1990, federally qualified health centers, will be allowed to secure drugs for specified immunizations from the Department for Health Services free to provide immunizations for Medicaid recipients. The specified immunizations are:

(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine, live (MMR);

(3) Poliovirus vaccine, live, oral (any type(e)) (OPV); and

(4) Hemophilus B conjugate vaccine (HBCV).

Section 5—Limitations on Services. The following limitations are applicable to specified services: (1) Pharmacy services are limited to those drugs covered through the pharmacy services element of the Medical Assistance Program;

(2) Other drugs and biologicals not covered under pharmacy services are limited to those necessary for the treatment of emergency cases;

(3) Laboratory services are limited to those procedures provided directly by the center, or if purchased, these services are limited to those covered under the independent laboratory element of the Medical Assistance Program;

(4) Dental services are limited to those procedures covered through the dental services element of the Medical Assistance Program;

(5) Vision care services are limited to those services covered through the vision care services element of the Medical Assistance Program;

(6) Audiology services are limited to those services covered through the hearing services element of the Medical Assistance Program;

(7) Abortion and sterilization services shall be performed in accordance with guidelines specified by the cabinet;

(8) Durable medical goods and prosthetics are limited to those covered under the durable medical equipment or home health element of the Medical Assistance Program;

(9) Mental health services are limited to emergency services and appropriate referral;

(10) Holding/observation accommodations are covered for not more than twenty-four (24) hours when provided in accordance with the following:

(a) The patient's record shall document the appropriateness of such utilization;

(b) The physician shall make the decision that such utilization is necessary;

(c) A licensed nurse shall be on duty at the center during the time a patient is held in center accommodations beyond regular scheduled hours;

(d) A licensed physician shall be on call at all times when a patient is held beyond the regular scheduled hours of the center;

(e) A statement of conditions observed and treatment rendered during the holding time shall be entered in the patient's medical record;

(11) Radiology procedures shall be performed by either a licensed practitioner of the healing arts or an individual holding a valid certificate to operate sources of radiation.

Section 6. Noncovered Services. The following services are specifically excluded from coverage as primary care center or federally-qualified health center services:

(1) All institutional services;

(2) Housekeeping, babysitting, and other homemaker services of like nature;

(3) Services which are not provided in accordance with restrictions imposed by law or administrative regulation.

Section 7. The provisions of this administrative regulation as amended shall be effective with regard to services provided on or after April 1, 1999.]

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY November 15, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008, at 9 a.m. in the Cabinet for Health and Family Services Health Services Board Room, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502)

564-7905, fax (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-6204

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes primary care center (PCC) and federally-qualified health center (FQHC) coverage provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes PCC and FQHC coverage provisions as permitted by state and federal authority.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of

(a) How the amendment will change this existing administrative regulation: This amendment expands, as mandated by the Centers for Medicare and Medicaid Services (CMS), the federally-qualified health center coverage scope to include behavioral health services. Additionally, the Department for Medicaid Services (DMS) is likewise expanding, at its own choosing, the PCC coverage scope to include behavioral health care. Lastly, the amendment includes formatting and drafting changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with a federal mandate.

(c) How the amendment conforms to the content of the authorizing statutes. The amendment conforms to the content of the authorizing statutes by complying with a federal mandate to ensure receipt of federal matching funds for federally-qualified health center services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by complying with a federal mandate to ensure receipt of federal matching funds for federally-qualified health center services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All federally-qualified health centers and primary care centers are affected by the amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Rather than restrict coverage, the amendments favor providers, expanding the scope of coverage to include behavioral health services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated, the amendments expand, rather than restrict, the scope of coverage.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments expand coverage which will enhance recipient access to behavioral health services as well as broaden provider's scope of care.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates the enhanced coverage may increase but the extent of cost is unknown and depends upon utilization and PCC and FQHC practice patterns. DMS is not implementing limits at this time, however, if utilization increases significantly, it intends to explore adopting safeguards or other measures to ensure that utilization is

appropriate and not excessive.

(b) On a continuing basis: DMS anticipates the enhanced coverage may increase but the extent of cost is unknown and depends upon utilization and PCC and FQHC practice patterns. DMS is not implementing limits at this time; however, if utilization increases significantly, it intends to explore adopting safeguards or other measures to ensure that utilization is appropriate and not excessive.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation as the current budget is adequate to accommodate the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? DMS did not apply tiering in this administrative regulation but rather chose to expand the scope of coverage for primary care centers identical to the scope expansion for federally-qualified health care centers though on the FQHC expansion is federally-mandated.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 1395x(aa) and as reinforced via Centers for Medicare and Medicaid Services (CMS) "BPHC Program Information Notice 2004-05 from CMS Director Dennis Smith.

2. State compliance standards KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. State Medicaid programs are mandated to cover FQHC behavioral health services furnished by clinical psychologists, clinical social workers and nurse practitioners, within their authorized scope of practice, to individuals who are categorically needy or medically needy (if the state Medicaid program has elected to cover federally-qualified health center services to individuals who are medically needy).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect all federally-qualified health centers and primary care centers.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by 42 USC 1395x(aa).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for the first year? This amendment could generate additional revenue for local government as some local health departments are primary care centers. The amount of additional revenue depends on behavioral health utilization and is not determinable at this time.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment could generate additional revenue for local government as some local health departments are primary care centers. The amount of additional revenue depends on behavioral health utilization and is not determinable at this time.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates the enhanced coverage may increase but the extent of cost is unknown and depends upon utilization and PCC and FQHC practice patterns. DMS is not implementing limits at this time; however, if utilization increases significantly, it intends to explore adopting safeguards or other measures to ensure that utilization is appropriate and not excessive.

(d) How much will it cost to administer this program for subsequent years? The Department for Medicaid Services (DMS) anticipates the enhanced coverage may increase but the extent of cost is unknown and depends upon utilization and PCC and FQHC practice patterns. DMS is not implementing limits at this time; however, if utilization increases significantly, it intends to explore adopting safeguards or other measures to ensure that utilization is appropriate and not excessive.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Medicaid Services

##### Division of Hospital and Provider Operations (Amendment)

#### 907 KAR 1:082. Rural health clinic services.

RELATES TO: KRS 205.520, 314.011, 319.050, 335.100, 42 C.F.R. 400.203, 42 C.F.R. 405.240(b), 405.2412-405.2417, 405.2450, 405.2452, 405.2468, 440.20, 42 C.F.R. 491.1-491.11, 42 U.S.C. 1395x(aa) and (hh)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), EO-2004-726

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program [of Medical Assistance in accordance with Title XIX of the Social Security Act]. KRS Chapter 205.520(3) authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the provisions relating to coverage of rural health clinic services for which payment shall be made by the Medicaid [Medical Assistance] Program on behalf of both categorically needy and medically needy.

Section 1. Definitions (1) "Advanced registered nurse practitioner" is defined by KRS Chapter 314.011(7).

(2) "Clinical psychologist" means a doctorate level psychologist who is licensed in accordance with KRS 319.050.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Homebound recipient" is defined by 42 C.F.R.

440 20(b)(4)(iv).

(5) "Intermittent nursing care" is defined by 42 C.F.R. 405.2401(b).

(6) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(7) "Medically necessary" means that a covered benefit or service is necessary in accordance with the provisions of 907 KAR 3:130. Medical necessity and clinically appropriate determination basis, Section 2.

(8) "Nurse-midwife" is defined by 42 C.F.R. 405.2401(b).

(9) "Part-time nursing care" is defined by 42 C.F.R. 405.2401(b).

(10) "Physician" is defined by 42 C.F.R. 405.2401(b).

(11) "Physician assistant" is defined by 42 C.F.R. 405.2401(b).

(12) "Other ambulatory services" is defined by 42 C.F.R. 440.20(c).

(13) "Rural health clinic" or "RHC" is defined by 42 C.F.R. 405.2401(b).

(14) "State plan" is defined by 42 C.F.R. 400.203.

(15) "Visiting nurse services" is defined by 42 C.F.R. 405.2401(b).

**Section 2. Covered Services.** The department shall cover the following medically necessary rural health clinic services furnished by an RHC that has been certified in accordance with 42 C.F.R. 491.1 through 491.11:

(1) Services pursuant to 42 U.S.C. 1395x(aa);

(2) Services provided by a physician if the physician:

(a) Complies with the physician responsibility requirements established by 42 C.F.R. 491.8(b); and

(b) 1. Performs the services in an RHC; or

2. Is compensated under an agreement with an RHC for providing services furnished to a Medicaid eligible RHC patient in a location other than the RHC;

(3) Services provided by a physician assistant, advanced registered nurse practitioner, or nurse midwife who is employed by or receives compensation from the RHC if the services:

(a) Are furnished by a member of the RHC's staff who complies with the responsibility requirements established by 42 C.F.R. 491.8(c);

(b) Are furnished under the medical supervision of a physician;

(c) Are furnished in accordance with a medical order for the care and treatment of a patient as prepared by a physician;

(d) Are within the provider's legally-authorized scope of practice; and

(e) Would be covered if furnished by a physician;

(4) Services or supplies furnished as an incident to services provided by a physician, physician assistant, advanced registered nurse practitioner, or nurse midwife if the service or supply meets the criteria established in 42 C.F.R. 405.2413 or 42 C.F.R. 405.2415;

(5) Part-time or intermittent visiting nurse care and related supplies, except for drugs or biologicals, if:

(a) The RHC is located in an area where a determination has been made that there is a shortage of home health agencies pursuant to 42 C.F.R. 405.2417;

(b) The services are provided by a registered nurse, licensed practical nurse, or a licensed vocational nurse who is employed by or compensated for the services by the RHC; and

(c) The services are furnished to a homebound recipient under a written plan of treatment that is:

1. Established and reviewed at least every sixty (60) days by a supervising physician of the RHC; or

2. Established by a physician, physician assistant, advanced registered nurse practitioner, or nurse midwife and reviewed and approved at least every sixty (60) days by a supervising physician of the RHC;

(6) Behavioral health services provided by a clinical psychologist, licensed clinical social worker, or advanced registered nurse practitioner if the services are:

(a) Provided by an individual who is employed by or furnishes services under contract to the RHC; and

(b) Are within the provider's legally-authorized scope of practice;

lice;

(7) Services or supplies incident to a clinical psychologist's or licensed clinical social worker's behavioral health services if the service or supply meets the criteria established in 42 C.F.R. 405.2452; and

(8) Other ambulatory services as established in the state plan.

**Section 3. Provision of Services.** An RHC shall comply with the service provision requirements established by 42 C.F.R. 491.9.

**Section 4. Immunizations.** An RHC may provide, upon request from a recipient, the following covered immunizations:

(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine live (MMR);

(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and

(4) Hemophilus B conjugate vaccine (HBCV). [Conditions of Participation. Each rural health clinic wishing to participate as a rural health clinic in the Medical Assistance Program must be certified as a rural health clinic provider pursuant to Title XVIII of the Social Security Act in accordance with conditions set forth at 42 C.F.R. Part 481.

**Section 2. Conditions of Coverage.** Each participating rural health clinic may provide for eligible medical assistance recipients the same services it may provide to Medicare recipients, i.e., physicians' services, nurse practitioners' services, and, where permitted under state law, physicians' assistants' services. In addition, rural health clinics may provide any other ambulatory service covered under the Medical Assistance Program so long as the rural health clinic meets the conditions for participation for that service element and provides the services in accordance with the applicable state administrative regulation covering that service; except, however, the rural health clinic need not be certified or licensed as the other type of provider (except to the extent provided for and/or required by law), nor have a separate participation agreement with the Medical Assistance Program for the provision of that type of service.

**Section 3. Immunizations.** Effective with regard to services provided on or after October 1, 1988, rural health clinics will be allowed to secure drugs for specified immunizations from the Department for Public Health free to provide immunizations for Medicaid recipients. The specified immunizations are:

(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine, live (MMR);

(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and

(4) Hemophilus B conjugate vaccine (HBCV);

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 15, 2007

FILED WITH AGENCY: November 20, 2007 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008 at 9 a.m. in the Cafeteria on the first floor of the Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564 7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-6204 or Barry Ingram (502) 564-5969

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rural health clinic (RHC) coverage provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes RHC coverage provisions as permitted by state and federal authority.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment expands, as mandated by the Centers for Medicare and Medicaid Services (CMS), the rural health clinic coverage scope to include behavioral health services. Additionally, the amendment includes formatting and drafting changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with a federal mandate.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with a federal mandate to ensure receipt of federal matching funds for RHC services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by complying with a federal mandate to ensure receipt of federal matching funds for RHC services

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All RHCs enrolled as participating providers in the Medicaid program are affected by the amendment

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Rather than restrict coverage, the amendments favor providers, expanding the scope of coverage to include behavioral health services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated, the amendments expand, rather than restrict, the scope of coverage

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments expand coverage which will enhance recipient access to behavioral health services as well as broaden provider's scope of care.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates the enhanced coverage may increase costs but the extent of cost is unknown and depends upon utilization and RHC practice patterns. DMS is not implementing limits at this time, however, if utilization increases significantly, it intends to explore adopting safeguards or other measures to ensure that utilization is appropriate and not excessive.

(b) On a continuing basis: DMS anticipates the enhanced coverage may increase costs but the extent of cost is unknown and depends upon utilization and RHC practice patterns. DMS is not

implementing limits at this time; however, if utilization increases significantly, it intends to explore adopting safeguards or other measures to ensure that utilization is appropriate and not excessive.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will be necessary to implement this administrative regulation as the existing budget can accommodate the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? DMS did not apply tiering in this administrative regulation as the federal mandate applies to all RHCs

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 1395x(aa) and as reinforced via Centers for Medicare and Medicaid Services (CMS) "BPHC Program Information Notice 2004-05 from CMS Director Dennis Smith.

2. State compliance standards. KRS Chapter 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. State Medicaid Programs are mandated to cover behavioral health services furnished by RHC clinical psychologists, clinical social workers and nurse practitioners, within their authorized scope of practice, to individuals who are categorically needy or medically needy (if the state Medicaid Program has elected to cover rural health clinic services to individuals who are medically needy).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)?

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect all rural health clinics enrolled in the Medicaid Program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by 42 C.F.R. 405.2450 and 42 C.F.R. 405.2468.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? DMS anticipates that the enhanced coverage may increase costs, however, the measures are necessary to enhance recipient access to mental health services.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that the enhanced coverage may increase costs; however, the measures are necessary to enhance recipient access to mental health services.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-)

Expenditures (+/-)

Other Explanation: The fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. The Department for Medicaid Services (DMS) anticipates the enhanced coverage may cost money; however, the measures are necessary to enhance recipient access to care.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Long Term Care and Community Alternatives**  
**(Amendment)**

**907 KAR 1:160. Home and community based waiver services.**

RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5607, 205.635, 42 C.F.R. 440.180

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 42 C.F.R. 440.180, 42 U.S.C. 1396a, b, d, n  
 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community based services waiver. This administrative regulation establishes the provisions for home and community based waiver services, including a consumer directed services option pursuant to KRS 205.5606.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066, Operation and services; adult day health care programs.

(3) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of an HCB recipient who does not require twenty-four (24) hour care in an institutional setting.

(4) "Advanced registered nurse practitioner" or "ARNP" means a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042.

(5) "Assessment team" means a team which:

- (a) Conducts assessment or reassessment services, and
- (b) Consists of:

1. Two (2) registered nurses; or
2. One (1) registered nurse and one (1) of the following
  - a. A social worker;
  - b. A certified psychologist with autonomous functioning;
  - c. A licensed psychological practitioner;
  - d. A licensed marriage and family therapist; or
  - e. A licensed professional clinical counselor.

(6) "Blended services" means a nonduplicative combination of HCB waiver services identified in Section 5 of this administrative

regulation and CDO services identified in Section 6 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(7) "Budget allowance" is defined by KRS 205.5605(1).

(8) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS Chapter 319.

(9) "Communicable disease" means a disease that is transmitted:

- (a) Through direct contact with an infected individual;
- (b) Indirectly through an organism that carries disease-causing microorganisms from one (1) host to another or a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another; or
- (c) Indirectly by a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another.

(10) "Consumer" is defined by KRS 205.5605(2).

(11) "Consumer-directed option" or "CDO" means an option established by KRS 205.5606 within the home- and community-based services waiver that allows recipients to:

- (a) Assist with the design of their programs;
- (b) Choose their providers of services; and
- (c) Direct the delivery of services to meet their needs.

(12) "Covered services and supports" is defined by KRS 205.5605(3).

(13) "DCBS" means the Department for Community Based Services.

(14) "Department" means the Department for Medicaid Services or its designee.

(15) "Electronic signature" is defined by KRS 369.102(8).

(16) "HCB recipient" means an individual who:

- (a) Is a recipient as defined by KRS 205.8451(9);
- (b) Meets the NF level of care criteria established in 907 KAR 1.022, Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services; and
- (c) Meets the eligibility criteria for HCB waiver services established in Section 4 of this administrative regulation.

(17) "Home and community based waiver services" or "HCB waiver services" means home and community based waiver services for individuals who meet the requirements of Section 4 of this administrative regulation.

(18) "Home and community support services" means nonresidential and nonmedical home and community based services and supports that:

- (a) Meet the consumer's needs; and
- (b) Constitute a cost-effective use of funds.

(19) "Home health agency" means an agency that is:

- (a) Licensed in accordance with 902 KAR 20.081, Operation and services; home health agencies; and
- (b) Medicare and Medicaid certified.

(20) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(21) "Licensed practical nurse" or "LPN" means a person who:

- (a) Meets the definition of KRS 314.011(9), and
- (b) Works under the supervision of a registered nurse.

(22) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(23) "NF" means nursing facility.

(24) "NF level of care" means a high intensity or low intensity patient status determination made by the department in accordance with 907 KAR 1:022, Nursing facility services intermediate care facility for individuals with mental retardation or a developmental disability services.

(25) "Normal baby sitting" means general care provided to a child which includes custody, control, and supervision.

(26) "Occupational therapist" is defined by KRS 319A.010(3).

(27) "Occupational therapist assistant" is defined by KRS 319A.010(4).

(28) "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.

(29) "Physical therapist" is defined by KRS 327.010(2).

(30) "Physical therapist assistant" means a skilled health care



worker who:

- (a) Is certified by the Kentucky Board of Physical Therapy; and
- (b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(31) "Physician assistant" or "PA" is defined by KRS 311.840(3).

(32) "Plan of care" or "POC" means a written individualized plan developed by an HCB recipient or an HCB recipient's legal representative, case manager, or other individual designated by the HCB recipient.

(33) "Plan of treatment" means a care plan used by an ADHC center.

(34) "Registered nurse" or "RN" means a person who:

- (a) Meets the definition established in KRS 314.011(5); and
- (b) Has one (1) year or more experience as a professional nurse.

(35) "Representative" is defined by KRS 205.5605(6).

(36) "Sex crime" is defined by KRS 17.165(1).

(37) "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.

(38) "Speech-language pathologist" is defined by KRS 334A.020(3).

(39) "Support broker" means an individual chosen by a consumer from an agency designated by the department to:

- (a) Provide training, technical assistance, and support to a consumer; and
- (b) Assist a consumer in any other aspects of CDO.

(40) "Support spending plan" means a plan for a consumer that identifies the:

- (a) CDO services requested;
- (b) Employee name;
- (c) Hourly wage;
- (d) Hours per month;
- (e) Monthly pay;
- (f) Taxes; and
- (g) Budget allowance.

(41) "Violent crime" is defined by KRS 17:165(3).

Section 2. Provider Participation. (1) In order to provide HCB waiver services, excluding consumer directed option services, a provider shall be a home health agency or ADHC center that provides services:

- (a) Directly; or
- (b) Indirectly through a subcontractor.

(2) An out-of-state provider shall comply with the requirements of this administrative regulation.

(3) A provider shall:

- (a) Comply with the following administrative regulations and program requirements:

1. 902 KAR 20.081, Operations and services, home health agencies;

2. 907 KAR 1:671, Conditions of Medicaid provider participation; withholding overpayments, administrative appeal process, and sanctions;

3. 907 KAR 1:672, Provider enrollment, disclosure, and documentation for Medicaid participation;

4. 907 KAR 1:673, Claims processing;

5. The Department for Medicaid Services Home and Community Based Waiver Services Manual; and

6. The Department for Medicaid Services Adult Day Health Care Services Manual;

(b) Not enroll an HCB recipient for whom the provider cannot provide HCB waiver services,

(c) Be permitted to accept or not accept an HCB recipient;

(d) Implement a procedure to ensure that the following is reported.

1. Abuse, neglect, or exploitation of an HCB recipient in accordance with KRS Chapters 209 or 620;

2. A slip or fall;

3. A transportation incident;

4. Improper administration of medication;

5. A medical complication; or

6. An incident caused by the recipient, including:

- a. Verbal or physical abuse of staff or other recipients;

b. Destruction or damage of property; or

c. Recipient self-abuse;

(e) Ensure a copy of each incident reported in accordance with paragraph (d) of this subsection is maintained in a central file subject to review by the department;

(f) Implement a process for communicating the incident, the outcome, and the prevention plan to:

1. An HCB recipient, family member, or his responsible party; and

2. The attending physician, PA, or ARNP;

(g) Maintain documentation of any communication provided in accordance with subsection (f) of this section. The documentation shall be:

1. Recorded in the HCB recipient's case record; and

2. Signed and dated by the staff member making the entry;

(h) Implement a procedure that ensures the reporting of a recipient or any interested party's [a] complaint against the provider or its personnel;

(i) Ensure that a copy of each complaint reported is maintained in a central file subject to review by the department;

(i) Implement a process for communicating a complaint, the resulting outcome, and related prevention plan to:

1. The HCB recipient, family member, or the HCB recipient's responsible party; and

2. The attending physician, PA, or ARNP if appropriate;

(k) Maintain documentation of any communication provided in accordance with subsection (i) of this section. The documentation shall be:

1. Recorded in the HCB recipient's case record; and

2. Signed and dated by the staff member making the entry;

(l) [to the department;

(j) Inform a recipient or any interested party in writing of the provider's:

1. Hours of operation; and

2. Policies and procedures;

(m)(j) Not permit a staff member who has contracted a communicable disease to provide a service to an HCB recipient until the condition is determined to no longer be contagious; and

(n)(k) Ensure that a staff member who provides direct services:

1. Demonstrates the ability to:

a. Read;

b. Write;

c. Understand and carry out instructions;

d. Keep simple records; and

e. Interact with an HCB recipient when providing an HCB waiver service;

2. Be trained by an HCB waiver provider;

3. Be supervised by an RN at least every other month.

Section 3. Maintenance of Records. (1) An HCB waiver provider shall maintain:

(a) A clinical record for each HCB recipient. The clinical record shall contain the following:

1. Pertinent medical, nursing, and social history;

2. A comprehensive assessment entered on form MAP-351 and signed by the:

a. Assessment team; and

b. Department,

3. A completed MAP 109-HCBW;

4. A copy of the MAP-350 signed by the recipient or his legal representative at the time of application or reapplication and each recertification thereafter;

5. The name of the case manager;

6. Documentation of all level of care determinations;

7. All documentation related to prior authorizations, including requests, approvals, and denials;

8. Documentation of each contact with, or on behalf of, an HCB recipient;

9 [7-] Documentation that the HCB recipient receiving ADHC services was provided a copy of the ADHC center's posted hours of operation; and

10 Documentation that the recipient or legal representative was informed of the procedure for reporting complaints; and

11[8-] Documentation of each service provided that shall include:

- a. The date the service was provided;
- b. The duration of the service;
- c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the HCB recipient's home;
- d. Itemization of each personal care or homemaking service delivered;
- e. The HCB recipient's arrival and departure time, excluding travel time, if the service was provided at the ADHC center;
- f. Progress notes which shall include documentation of changes, responses and treatments utilized to evaluate the HCB recipient's needs; and
- g. The signature of the service provider; and
- (b) Fiscal reports, service records, and incident reports regarding services provided. These reports shall be retained:

1. At least six (6) years from the date that a covered service is provided; or

2. For a minor three (3) years after the recipient reaches the age of majority under state law, whichever is longest.

(2) Upon request, an HCB provider shall make information regarding service and financial records available to the:

- (a) Department;
- (b) Cabinet for Health and Family Services, Office of Inspector General or its designee;
- (c) Department for Health and Human Services or its designee;
- (d) General Accounting Office or its designee;
- (e) Office of the Auditor of Public Accounts or its designee; or
- (f) Office of the Attorney General or its designee.

Section 4. HCB Recipient Eligibility Determinations and Redeterminations. (1) An HCB waiver service shall be provided to a Medicaid eligible HCB recipient who:

(a) Is determined by the department to meet NF level of care requirements; and

(b) Would, without waiver services, be admitted by a physician's order to an NF.

(2) The department shall perform an NF level of care determination for each HCB recipient at least once every twelve (12) months or more often if necessary.

(3) An HCB waiver service shall not be provided to an individual who:

- (a) Does not require a service other than:
  1. A minor home adaptation;
  2. Case management; or
  3. A minor home adaptation and case management;
- (b) Is an inpatient of:
  1. A hospital;
  2. An NF; or
  3. An intermediate care facility for an individual with mental retardation or a developmental disability;
- (c) Is a resident of a licensed personal care home; or
- (d) Is receiving services from another Medicaid home and community based services waiver program.

(4) An HCB waiver provider shall:

(a) Inform an HCB recipient or his legal representative of the choice to receive:

1. HCB waiver services; or
2. Institutional services; and

(b) Require an HCB recipient to sign a MAP-350 form at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive HCB waiver or institutional services.

(5) An eligible HCB recipient or the recipient's legal representative shall select a participating HCB waiver provider from which the recipient wishes to receive HCB waiver services.

(6) The department may exclude from the HCB waiver program an individual for whom the aggregate cost of HCB waiver services would reasonably be expected to exceed the cost of NF services.

(7) An HCB waiver provider shall use a MAP-24 to notify the local DCBS office and the department of an HCB recipient's:

- (a) Termination from the HCB waiver program; or
- (b) 1. Admission to an NF for less than sixty (60) consecutive

days; and

2. Return to the HCB waiver program from an NF within sixty (60) consecutive days.

Section 5. Covered Services. (1) An HCB waiver service shall:

(a) Be prior authorized by the department to ensure that the service or modification of the service already meets the needs of the HCB recipient;

(b) Be provided pursuant to a plan of care or, for a CDO service, pursuant to a plan of care and support spending plan;

(c) Except for a CDO service, not be provided by a member of the HCB recipient's family. A CDO service may be provided by an HCB recipient's family member; and

(d) Shall be accessed within sixty (60) days of the date of prior authorization.

(2) To request prior authorization, a provider shall submit a completed MAP 10, MAP 109, and MAP 351 to the department.

(3) Covered HCB services shall include:

(a) A comprehensive assessment which shall:

1. Identify an HCB recipient's needs and the services that the HCB recipient or the recipient's family cannot manage or arrange for on the recipient's behalf;

2. Evaluate an HCB recipient's physical health, mental health, social supports, and environment;

3. Be requested by an individual seeking HCB waiver services or the individual's family, legal representative, physician, physician assistant, or ARNP;

4. Be conducted by an assessment team within seven (7) calendar days of receipt of the request for assessment; and

5. Include at least one (1) face-to-face home visit by a member of the assessment team with the HCB recipient and, if appropriate, the recipient's family;

(b) A reassessment service which shall:

1. Determine the continuing need for HCB waiver services and, if appropriate, CDO services;

2. Be performed at least every twelve (12) months;

3. Be conducted using the same procedures used in an assessment service;

4. Not be retroactive; and

5. Be initiated by an HCB waiver provider or support broker who shall:

a. Notify the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive; and

b. Not be reimbursed for a service provided during a period that an HCB recipient is not covered by a valid level of care certification;

(c) A case management service which shall:

1. Consist of coordinating the delivery of direct and indirect services to an HCB recipient;

2. Be provided by a case manager who shall:

a. Be an RN, LPN, social worker, certified psychologist with autonomous functioning, licensed psychological practitioner, LMFT, or an LPCC;

b. Arrange for a service but not provide a service directly;

c. Contact the HCB recipient monthly by telephone or through a face-to-face visit at the HCB recipient's residence or in the ADHC center, with a minimum of one (1) face-to-face visit between the case manager and the recipient every other month; and

d. Assure that service delivery is in accordance with an HCB recipient's plan of care;

3. Not include a group conference; and

4. Include development of a plan of care that shall:

a. Be completed on the MAP 109;

b. Reflect the needs of the HCB recipient;

c. List goals, interventions, and outcomes;

d. Specify services needed;

e. Determine the amount, frequency, and duration of services;

f. Provide for reassessment at least every twelve (12) months;

g. Be developed and signed by the assessment team, case manager, and HCB recipient or his family; and

h. Be submitted to the department no later than thirty (30) calendar days after receiving the department's verbal approval of NF level of care;

(d) A homemaker service which shall consist of general household activities and shall be provided:

1. By staff pursuant to Section 2(3)(m) and (n)(i)-(k) of this administrative regulation; and

2. To an HCB recipient:

a. Who is functionally unable, but would normally perform age-appropriate homemaker tasks; and

b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaking activities;

(e) A personal care service which shall consist of age-appropriate medically-oriented services and be provided:

1. By staff pursuant to Section 2(3)(m) and (n)(i)-(k) of this administrative regulation; and

2. To an HCB recipient:

a. Who does not need highly skilled or technical care;

b. For whom services are essential to the recipient's health and welfare and not for the recipient's family; and

c. Who needs assistance with age-appropriate activities of daily living;

(f) An attendant care service which shall consist of hands-on care that is:

1. provided by staff pursuant to Section 2(3)(m) and (n)(i)-(k) of this administrative regulation to an HCB recipient who:

a. Is medically stable but functionally dependent and requires care or supervision twenty-four (24) hours per day; and

b. Has a family member or other primary caretaker who is employed and not able to provide care during working hours;

~~[c. Prior to being eligible for the HCB Waiver Program in accordance with Section 4 of this administrative regulation, was able to care for him or herself;]~~

2. Not of a general housekeeping nature; and

3. Not provided to an HCB recipient who is receiving any of the following HCB waiver services:

a. Personal care;

b. Homemaker; or

c. ADHC;

(g) A respite care service which shall be short term care based on the absence or need for relief of the primary caretaker and be:

1. Provided by staff pursuant to Section 2(3)(m) and (n)(i)-(k) of this administrative regulation who provide services at a level that appropriately and safely meets the medical needs of the HCB recipient in the following settings:

a. An HCB recipient's place of residence; or

b. An ADHC center during posted hours of operation;

2. Provided to an HCB recipient who has care needs beyond normal baby sitting; and

3. Used no less than every six (6) months;

4. Provided in accordance with 902 KAR 20.066, Operation and services: adult day health care programs, Section 2(1)(b)10a through c, if provided to a child under age twenty-one (21) in an ADHC center;

(h) A minor home adaptation service which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of an HCB recipient and which shall:

1. Meet all applicable safety and local building codes;

2. Relate strictly to the HCB recipient's disability and needs;

3. Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the HCB recipient; and

4. Be submitted on form MAP-95 for prior authorization; or

(i) An ADHC service which shall:

1. Except for an HCB recipient approved for an ADHC service prior to May 1, 2003, be provided to an HCB recipient who is at least twenty-one (21) years of age;

2. Include the following basic services and necessities provided to Medicaid waiver recipients during the posted hours of operation:

a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;

b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;

c. Snacks;

d. Supervision by an RN;

e. Age and diagnosis appropriate daily activities; and

f. Routine services that meet the daily personal and health care needs of an HCB recipient, including:

(i) Monitoring of vital signs;

(ii) Assistance with activities of daily living; and

(iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by an HCB recipient;

3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;

4. Include ancillary services in accordance with 907 KAR 1:023, Review and approval of selected therapies as ancillary services in nursing facilities, if ordered by a physician, PA, or ARNP in an HCB recipient's ADHC plan of treatment. Ancillary services shall:

a. Consist of evaluations or reevaluations for the purpose of developing a plan which shall be carried out by the HCB recipient or ADHC center staff;

b. Be reasonable and necessary for the HCB recipient's condition;

c. Be rehabilitative in nature;

d. Include physical therapy provided by a physical therapist or physical therapist assistant, occupational therapy provided by an occupational therapist or occupational therapist assistant, or speech therapy provided by a speech-language pathologist; and

e. Comply with the physical, occupational, and speech therapy requirements established in Technical Criteria for Reviewing Ancillary Services for Adults;

4. Include respite care services pursuant to paragraph (g) of this subsection;

5. Be provided to an HCB recipient by the health team in an ADHC center which may include:

a. A physician;

b. A physician assistant;

c. An ARNP;

d. An RN;

e. An LPN;

f. An activities director;

g. A physical therapist;

h. A physical therapist assistant;

i. An occupational therapist;

j. An occupational therapist assistant;

k. A speech pathologist;

l. A social worker;

m. A nutritionist;

n. A health aide;

o. An LPCC;

p. An LMFT;

q. A certified psychologist with autonomous functioning; or

r. A licensed psychological practitioner; and

[6.] Be provided pursuant to a plan of treatment. The plan of treatment shall:

(i) Be developed and signed by each member of the plan of treatment team which shall include the recipient or a legal representative of the recipient;

(ii) Include pertinent diagnoses, mental status, services required, frequency of visits to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permitted, nutritional requirements, medication, treatment, safety measures to protect against injury, instructions for timely discharge, and other pertinent information; and

(iii) Be developed annually from information on the MAP 351 [reviewed annually] and revised as needed[and

b. The plan of treatment team shall:

(i) include the recipient or a legal representative of the recipient; and

(ii) submit a current copy of the plan of treatment to the department annually or following any revision].

(4) Modification of an ancillary therapy service or an ADHC unit of service shall require prior authorization as follows.

(a) Prior authorization shall:

1. Be requested by an RN or designated ADHC center staff; and
2. Require submission of a revised MAP 109 and an order signed by a physician, physician assistant, or ARNP;
- (b) An RN or designated ADHC center staff shall forward a copy of the documents required in paragraph (a) of this subsection to the HCB case manager or the consumer's support broker for inclusion in the HCB recipient's case records within ten (10) working days of the prior authorization request; and
- (c) Upon approval or denial of a prior authorization request, the department shall provide written notification to the HCB agency, the ADHC center, and the HCB recipient.

Section 6. Consumer Directed Option. (1) Covered services and supports provided to an HCB recipient participating in CDO shall include:

- (a) A home and community support service which shall:
  1. Be available only under the consumer directed option;
  2. Be provided in the consumer's home or in the community;
  3. Be based upon therapeutic goals and not diversional in nature; and
  4. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO HCB services; or

(b) Goods and services which shall:

1. Be individualized;
  2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the recipient;
  3. Not include experimental goods or services; and
  4. Not include chemical or physical restraints.
- (2) To be covered, a CDO service shall be specified in the plan of care.

(3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or similar service provided in a non-CDO HCB setting.

(4) A consumer, including a married consumer, shall choose providers and a consumer's choice shall be reflected or documented in the plan of care.

(5) A consumer may designate a representative to act on the consumer's behalf. The CDO representative shall:

- (a) Be twenty-one (21) years of age or older;
  - (b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and
  - (c) Be appointed by the consumer on a MAP 2000 form.
- (6) A consumer may voluntarily terminate CDO services by completing a MAP 2000 and submitting it to the support broker.
- (7) The department shall immediately terminate a consumer from CDO services if:

- (a) Imminent danger to the consumer's health, safety, or welfare exists; or
  - (b) The consumer fails to pay patient liability.
- (8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care.
- (9) Prior to a consumer's termination from CDO services, the support broker shall:

- (a) Notify the assessment or reassessment service provider of potential termination;
- (b) Assist the consumer in developing a resolution and prevention plan;
- (c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to resolve the issue, develop and implement a prevention plan or designate a CDO representative;
- (d) Complete, and submit to the department, a MAP 2000 terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and
- (e) Assist the consumer in transitioning back to traditional HCB services.

(10) Upon an involuntary termination of CDO services, the department shall

- (a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and
- (b) Except in a case where a consumer failed to pay patient

liability, inform the consumer of the right to appeal the department's decision in accordance with Section 8 of this administrative regulation.

(11) A CDO provider shall:

- (a) Be selected by the consumer;
- (b) Submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;
- (c) Be eighteen (18) years of age or older;
- (d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;
- (e) Be able to communicate effectively with the consumer, consumer representative or family;
- (f) Be able to understand and carry out instructions;
- (g) Be able to keep records as required by the consumer;
- (h) Submit to a criminal background check;
- (i) Submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100, Nurse aid abuse registry, home health aide abuse registry, and hearing procedures, and not be found on the registry;
- (j) Not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (3);
- (k) Complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;
- (l) Be approved by the department;
- (m) Maintain and submit timesheets documenting hours worked; and

(n) Be a friend, spouse, parent, family member, other relative, employee of a provider agency or other person hired by the consumer.

(12) A parent, parents combined or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of children who receive waiver services.

(13)(a) The department shall establish a budget for a consumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer's budget shall equal the average per capita historical costs of HCB recipients minus five (5) percent.

(b) Cost of services authorized by the department for the individual's prior year plan of care but not utilized may be added to the budget if necessary to meet the individual's needs.

(c) The department shall adjust a consumer's budget based on the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and

2. The department approves the adjustment.

(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;
2. The cost effectiveness of the proposed services; and
3. Protection of the consumer's health, safety and welfare.

(f) A consumer's budget shall not exceed the average per capita cost of services provided to individuals in a NF.

(14) Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.

(15) A support broker shall:

- (a) Provide any needed assistance to a consumer with any aspect of CDO or blended services;
- (b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;
- (c) Comply with all applicable federal and state laws and requirements;
- (d) Continually monitor a consumer's health, safety and welfare; and

(e) Complete or revise a plan of care using person-centered planning principles.

(16)(a) For a CDO participant, a support broker may conduct an assessment or reassessment; and

(b) A CDO assessment or reassessment performed by a support broker shall comply with the assessment or reassessment provisions established in Section 5(2) of this administrative regulation.

**Section 7. Use of Electronic Signatures.** (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A home health provider that chooses to use electronic signatures shall.

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, and contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his responsibility in allowing the use of the electronic signature; and

(c) Provide the department with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form, and

3. The original filed signature immediately upon request.

**Section 8. Appeal Rights.** An appeal of a department determination regarding NF level of care or services to an HCB recipient or a consumer shall be in accordance with 907 KAR 1.563.

**Section 9 Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) "Department for Medicaid Services Adult Day Health Care Services Manual", May 2005 edition;

(b) "Department for Medicaid Services Home and Community Based Waiver Services Manual", September 2006 edition;

(c) "Person Centered Planning: Guiding Principles", March 2005 edition;

(d) "Technical Criteria for Reviewing Ancillary Services for Adults", November 2003 edition;

(e) "MAP-24, The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services Memorandum", February 2001 edition;

(f) "MAP-95 Request for Equipment Form" June 2007 [September 2002] edition,

(g) "MAP 109, Plan of Care/Prior Authorization for HCB Waiver Services", March 2007 edition;

(h) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", January 2000 edition; and

(i) "MAP-351, The Department for Medicaid Services, Medicaid Waiver Assessment", March 2007 edition;

(j) "MAP 2000, Initiation/Termination of Consumer Directed Option (CDO)", March 2007, edition; and

(k) "MAP-10, Waiver Services", March 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 28, 2007

FILED WITH LRC: December 5, 2007 at 11 a.m

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested,

be held on January 21, 2008, at 9 a.m. in the Cabinet for Health and Family Services Health Services Board Room, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions for home and community based waiver services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions for the home and community based waiver services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions for the home and community based waiver services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the provisions for the home and community based waiver services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds goods and services to the consumer directed option; clarifies various policies such as documentation requirements, respite hours, respite for children; and alters consumer directed option (CDO) budget caps consistent with the other two (2) programs offering CDO.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add goods and services to the consumer-directed option established by KRS 205.5606, to clarify various policies and to cap CDO budgets consistent with the caps in other programs offering CDO. The CDO expansion is necessary to provide more options for consumers consistent with KRS 205.5606.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 205.2605 and 205.5606 by adding goods and services to the consumer-directed option.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by adding goods and services to the consumer-directed option accordance with KRS 205.5605 and 5606.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect Medicaid's home and community based waiver recipients. Currently, there are approximately 13,000 members enrolled in the home and community based waiver program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Providers will have to develop and maintain complaint reporting and documentation processes and will have to document level of care determinations and prior authorizations in an individual's record as a result of this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendments are not expected to impose any cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The amendments are expected to generate enhanced health care outcomes as well as options for recipients.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates additional costs as the consumer directed option is expanding to include goods and services; however, the specific amount of costs is indeterminable at this time. DMS does not anticipate costs exceeding funds available within the current budget.

(b) On a continuing basis: DMS anticipates additional costs as the consumer directed option is expanding to goods and services; however, the specific amount of costs is indeterminable at this time. DMS does not anticipate costs exceeding funds available within the current budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect each Medicaid home and community based waiver recipient who opts to participate in the consumer directed option program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required by KRS 205.5605 and 205 5606.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue for state or local government during the first year of program administration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for subsequent years? This amendment will not generate revenue for state or local government during subsequent years of program administration.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates additional costs as the consumer directed option is expanding to include goods and services; however, the specific amount of costs is indeterminable at this time. DMS does not anticipate costs exceeding funds available within the current budget

(d) How much will it cost to administer this program for subsequent years? DMS anticipates additional costs as the consumer directed option is expanding to include goods and services; however, the specific amount of costs is indeterminable at this time. DMS does not anticipate costs exceeding funds available within the current budget..

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \_\_\_\_\_

Expenditures (+/-): \_\_\_\_\_

Other Explanation: No additional expenditures are necessary to implement this amendment.

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Medicaid Services

##### Division of Administration and Financial Management (Amendment)

#### 907 KAR 1:604. Recipient cost-sharing.

RELATES TO: KRS 205.560, 205.6312, 205 6485, 205 8451, 319A 010, 327.010, 334A.020, 42 C.F.R. 430.10, 431.51, 447.15, 447.21, 447.50, 447.52, 447 53, 447.54, 447 59, 457.224, 457.310, 457.505, 457.510, 457.515, 457.520, 457.530, 457 535, 457.570, 42 U.S.C. 1396a, b, c, d, o, r-6, r-8, 1397aa-1397jj, 42 U.S.C. 1396a(10)(A), 1396a(a)(52), 1396a(aa), 1396a(l)(1)(B), (C), (D), 1396d(a)(4)(C), 1396d(o), 1396u-1

STATUTORY AUTHORITY: KRS 194A 030(2), 194A.050(1), 205.520(3), 205 6312(5), 205.6485(1), 42 C.F.R. 431 51, 447.15, 447.51, 447.53, 447.54, 447.55, 447 57, 457.535, 457.560, 42 U.S.C. 1396-6(b)(5), Pub. L. 106-170, 109-171

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205 6312(5) requires the cabinet to promulgate administrative regulations that implement copayments or other similar charges for Medicaid recipients. KRS 205.6485(1) requires the cabinet to establish, by administrative regulation, premiums for families with children in the Kentucky Children's Health Insurance Program. 42 U.S.C. 1396-6(b)(5) allows for a monthly premium in the second six (6) months of transitional medical assistance. This administrative regulation establishes the provisions relating to imposing and collecting copayments, coinsurance and premiums from certain recipients.

Section 1. Definitions. (1) "Coinsurance" means a percentage of the cost of a Medicaid benefit that a recipient is required to pay.

(2) "Comprehensive choices" means a benefit plan for an individual who:

(a) Meets the nursing facility patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. A nursing facility in accordance with 907 KAR 1:022;

2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3 090,

3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160, or

4. The Model Waiver II Program in accordance with 907 KAR 1.595, and

(c) Has a designated package code of F, G, H, I, J, K, L, M, O,



P, Q, or R.

(3) "Copayment" means a dollar amount representing the portion of the cost of a Medicaid benefit that a recipient is required to pay.

(4) "Department" means the Department for Medicaid Services or its designee.

(5) "Drug" means a covered drug provided in accordance with 907 KAR 1.019 for which the Department for Medicaid Services provides reimbursement.

(6) "Family choices" means a benefit plan for an individual who:

(a) Is covered pursuant to

1. 42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u - 1;

2. 42 U.S.C. 1396a(a)(52) and 1396r - 6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);

3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(i)(1)(B);

4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(i)(1)(C);

5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(i)(1)(D); or

6. 42 C.F.R. 457.310; and

(b) Has a designated package code of 2, 3, 4, or 5.

(7) "Federal Poverty Level" or "FPL" means guidelines that are updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2).

(8) "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:

(a) Caretaker relatives who:

1. Receive K-TAP and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. Receive SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(c) Blind individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(d) Disabled individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; including children; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(f) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022;

(g) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022.[or]

(h) Pregnant women; or

(i) Medicaid works individuals.

(9)(8) "KCHIP" means the Kentucky Children's Health Insurance Program.

(10)(9) "KCHIP - Separate Program" means a health benefit program for individuals with eligibility determined in accordance with 907 KAR 4.030, Section 2.

(11)(40) "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families

(TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

(12) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B) would be considered to be receiving supplement security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets income standards established in 907 KAR 1:640. Income standards for Medicaid; and

(e) Meets resource standards established in 907 KAR 1:645. Resource standards for Medicaid.

(13)(44) "Nonemergency" means a condition which does not require an emergency service pursuant to 42 C.F.R. 447.53.

(14)(42) "Nonpreferred brand name drug" means a brand name drug that is not on the department's preferred drug list.

(15)(43) "Optimum choices" means a benefit plan for an individual who:

(a) Meets the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1:022; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and

(c) Has a designated package code of S, T, U, V, W, X, Z, O, or 1.

(16)(44) "Preferred brand-name drug" means a brand-name drug for which no generic equivalent exists which has a more favorable cost to the department and which prescribers are encouraged to prescribe, if medically appropriate.

(17)(46) "Premium" means an amount paid periodically to purchase health care benefits.

(18)(46) "Recipient" is defined in KRS 205.8451 and applies to an individual who has been determined eligible to receive benefits under the state's Title XIX or Title XXI program in accordance with 907 KAR Chapters 1 through 4

(19)(47) "Transitional medical assistance" or "TMA" means an extension of Medicaid benefits for up to twelve (12) months for families who lose Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earning disregards in accordance with 907 KAR 1:011, Section 5(8)(b)

Section 2. Comprehensive Choices Copayments and Coinsurance. (1) Except for an individual excluded pursuant to Section 6(1) of this administrative regulation, a recipient of the comprehensive choices plan shall pay the copayment or coinsurance amount established in this table, with the corresponding provider reimbursement deductions.

Benefit	Copayment or Coinsurance Amount	Amount of Copayment or Coinsurance Deducted from Provider Reimbursement
Acute inpatient hospital admission	\$10 copayment	Full amount of the copayment
Outpatient hospital or ambulatory surgical center visit	\$3 copayment	Full amount of the copayment
Generic prescription drug	\$1 copay-	Full amount of

or an atypical anti-psychotic drug if no generic equivalent for the atypical anti-psychotic drug exists for a recipient who does not have Medicare Part D drug coverage	ment	the copayment
Preferred brand name drug for a recipient who does not have Medicare Part D drug coverage	\$2 copayment	Full amount of the copayment
Nonpreferred brand name drug for a recipient who does not have Medicare Part D drug coverage	5% coinsurance, not to exceed \$20 per non-preferred brand name drug prescription	Full amount of the coinsurance, not to exceed \$20 per non-preferred brand name drug prescription
Emergency room for a nonemergency visit	5% coinsurance, up to a maximum of \$6	No deduction
DMEPOS	3% coinsurance up to a maximum of \$15 per item	The amount of the coinsurance or, if applicable, \$15
Podiatry office visit	\$2 copayment	Full amount of the copayment
[Ophthalmological or optometric office visit (99000 series evaluation and management codes)]	[\$2 copayment]	[Full amount of the copayment]

(2) A recipient shall not be liable for more than:

(a) \$225 per calendar year for prescription drug copayments or coinsurance; or

(b) \$225 per calendar year for service copayments or coinsurance.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(4) If a service or benefit is not listed in the comprehensive choices cost-sharing grid, the cost-sharing obligation shall be \$0 for that service or benefit for an individual in the comprehensive choices benefit plan.

### Section 3. Family Choices Copayments and Coinsurance.

(1)(a) Only KCHIP children, except for any individual excluded in accordance with Section 6(1), shall be family choices individuals subject to copayments or coinsurance.

(b) An individual referenced in paragraph (a) of this subsection shall pay the copayment or coinsurance amounts established in the following table, along with the corresponding provider reimbursement deductions.

Benefit	Copayment or Coinsurance Amount	Amount of Copayment or Coinsurance Deducted from Provider Reimbursement
Allergy service or testing (no copayment exists for injections)	\$2 copayment	Full amount of copayment
Generic prescription drug or atypical anti-psychotic drug if no generic equivalent exists	\$1 copayment	Full amount of copayment
Preferred brand name drug	\$2 copayment	Full amount of copayment
Nonpreferred brand name	\$3 copay-	Full amount of

drug	ment	the copayment
Emergency room for a nonemergency visit	5% coinsurance, up to a maximum of \$6	No deduction

(2) A recipient shall not be liable for more than:

(a) \$225 per calendar year for prescription drug copayments or coinsurance; or

(b) \$225 per calendar year for service copayments or coinsurance.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(4) If a service or benefit is not listed in the family choices cost-sharing grid, the cost-sharing obligation shall be \$0 for that service or benefit for an individual in the family choices benefit plan.

Section 4. Global Choices Copayments and Coinsurance. (1) Except for an individual excluded pursuant to Section 6(1) of this administrative regulation, a recipient of the global choices plan shall pay the copayment or coinsurance amount established in this table, with the corresponding provider reimbursement deductions

Benefit	Copayment or Coinsurance	Copayment or Coinsurance Amount Deducted from Provider Reimbursement
Acute inpatient hospital admission	\$50 copayment	Full amount of copayment
Outpatient hospital or ambulatory surgical center visit	\$3 copayment	Full amount of copayment
Laboratory, diagnostic or radiology service	\$3 copayment	Full amount of copayment
Physician services	\$2 copayment	No deduction
Visit to a rural health clinic, a primary care center, or a federally qualified health center	\$2 copayment	Full amount of copayment
Dental office visit	\$2 copayment	No deduction
Physical therapy	\$2 copayment	Full amount of the copayment
Speech therapy	\$1 copayment	Full amount of the copayment
Chiropractic office visit	\$2 copayment	Full amount of the copayment
Generic prescription drug or an atypical anti-psychotic drug if no generic equivalent for the atypical anti-psychotic drug exists for a recipient who does not have Medicare Part D drug coverage	\$1 copayment	Full amount of the copayment
Preferred brand name drug for a recipient who does not have Medicare Part D drug coverage	\$2 copayment	Full amount of the copayment
Nonpreferred brand name drug for a recipient who does not have Medicare Part D drug coverage	5% coinsurance, not to exceed \$20 per nonpreferred brand name drug prescription	Full amount of the coinsurance, not to exceed \$20 per nonpreferred brand name drug prescription
Emergency room for a nonemergency visit	5% coinsurance, up to a maximum of \$6	No deduction
DMEPOS	Three (3) percent	The amount of the

	coinsurance not to exceed \$15 per item	coinsurance or, if applicable, \$15
Podiatry office visit	\$2 copayment	Full amount of the copayment
Ophthalmological or optometric office visit (99000 series evaluation and management codes)	\$2 copayment	Full amount of the copayment

(2) Physician services shall:

(a) Include care provided by a physician, a certified pediatric and family nurse practitioner, a nurse midwife, an advanced registered nurse practitioner, or a physician assistant; and

(b) Not include a visit to a federally-qualified health center, rural health clinic, or a primary care center.

(3) A recipient shall not be liable for more than:

(a) \$225 per calendar year for prescription drug copayments or coinsurance; or

(b) \$225 per calendar year for service copayments or coinsurance.

(4) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(5) If a service or benefit is not listed in the global choices cost-sharing grid, the cost-sharing obligation shall be \$0 for that service for an individual in the global choices benefit plan.

#### Section 5. Optimum Choices Copayments and Coinsurance.

(1) Except for an individual excluded pursuant to Section 6(1) of this administrative regulation, a recipient of the optimum choices plan shall pay the copayment or coinsurance amount established in this table, with the corresponding provider reimbursement deductions.

Benefit	Copayment or Coinsurance Amount	Amount of Copayment or Coinsurance Deducted from Provider Reimbursement
Acute inpatient hospital admission	\$10 copayment	Full amount of the copayment
Outpatient hospital or ambulatory surgical center visit	\$3 copayment	Full amount of the copayment
Generic prescription drug or an atypical antipsychotic drug if no generic equivalent for the atypical antipsychotic drug exists for a recipient who does not have Medicare Part D drug coverage	\$1 copayment	Full amount of the copayment
Preferred brand name drug for a recipient who does not have Medicare Part D drug coverage	\$2 copayment	Full amount of the copayment
Nonpreferred brand name drug for a recipient who does not have Medicare Part D drug coverage	5% coinsurance, not to exceed \$20 per non-preferred brand name drug prescription	Full amount of the coinsurance, not to exceed \$20 per nonpreferred brand name drug prescription
Emergency room for a nonemergency visit	5% coinsurance, up to a maximum of \$6	No deduction
DMEPOS	3% coinsurance up to a maximum of \$15 per item	The amount of the coinsurance or, if applicable, \$15
Podiatry office visit	\$2 copayment	Full amount of the

	copayment
(Ophthalmological or optometric office visit (99000 series evaluation and management codes))	(\$2 copayment) [Full amount of the copayment]

(2) A recipient shall not be liable for more than

(a) \$225 per calendar year for prescription drug copayments or coinsurance; or

(b) \$225 per calendar year for service copayments or coinsurance.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(4) If a service or benefit is not listed in the optimum choices cost-sharing grid, the cost-sharing obligation shall be \$0 for that service or benefit for an individual in the optimum choices benefit plan.

#### Section 6. Copayment, Coinsurance and Premium General Provisions and Exclusions. (1) The department shall impose no cost sharing for the following

(a) A service furnished to an individual who has reached his or her 18th birthday, but has not turned nineteen (19) required to be provided medical assistance under 42 U.S.C. 1396a(a)(10)(A)(i)(I), including services furnished to an individual with respect to whom aid or assistance is made available under Title IV, Part B (42 U.S.C. 620 to 629) to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under Title IV, Part E (42 U.S.C. 670 to 679b), without regard to age;

(b) A preventive service (for example, well baby and well child care and immunizations) provided to a child under eighteen (18) years of age regardless of family income;

(c) A service furnished to a pregnant woman;

(d) A service furnished to a terminally ill individual who is receiving hospice care as defined in 42 U.S.C. 1396d(o);

(e) A service furnished to an individual who is an inpatient in a hospital, nursing facility, intermediate care facility for individuals with mental retardation or a developmental disability, or other medical institution, if the individual is required, as a condition of receiving services in the institution under Kentucky's Medicaid Program, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs;

(f) An emergency service as defined by 42 C.F.R. 447.53;

(g) A family planning service or supply as described in 42 U.S.C. 1396d(a)(4)(C), or

(h) A service furnished to a woman who is receiving medical assistance via the application of 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII) and 1396a(aa).

(2) The department has determined that any individual liable for a copayment, coinsurance amount or premium shall:

(a) Be able to pay a required copayment, coinsurance amount or premium; and

(b) Be responsible for a required copayment, coinsurance or premium.

(3) A pharmacy provider or supplier, including a pharmaceutical manufacturer as defined in 42 U.S.C. 1396r-8(k)(5), or a representative, employee, independent contractor or agent of a pharmaceutical manufacturer, shall not make a copayment or coinsurance amount for a recipient.

(4) A parent or guardian shall be responsible for a copayment, coinsurance amount or premium imposed on a dependent child under the age of twenty-one (21).

(5) Provisions regarding a provider's ability to deny a service or benefit based on a recipient's failure to make a required copayment or coinsurance payment shall be as established in KRS 205.6312(4) and 2006 Ky. Acts ch. 252 and in accordance with Pub L. 109-171.

(6) A provider:

(a) Shall collect from a recipient the copayment, coinsurance amount, or premium as imposed by the department for a recipient in accordance with this administrative regulation,

(b) Shall not waive a copayment, coinsurance amount, or premium obligation as imposed by the department for a recipient; and

(c) May collect a copayment, coinsurance amount or premium at the time a benefit is provided or at a later date.

(7) Cumulative cost sharing for premium payments and copayments for a family with children who receive benefits under Title XXI, 42 U.S.C. 1397aa to 1397jj, shall be limited to five (5) percent of the annual family income.

(8) A monthly premium for a family who receives benefits under 42 U.S.C. 1396r-6(b) shall not exceed three (3) percent of:

(a) The family's average gross monthly income; or

(b) The family's average gross monthly income minus the average monthly costs of child care necessary for the employment of the caretaker relative.

(9) The department shall not increase its reimbursement to a provider to offset an uncollected copayment, coinsurance amount or premium from a recipient.

Section 7. Premiums for KCHIP - Separate Program Recipients.

(1) A family with children participating in the KCHIP Separate Program shall pay a premium of twenty (20) dollars per family, per month.

(2)(a) The family of a new KCHIP Separate Program eligible shall be required to pay a premium beginning with the first full month of benefits after the month of application.

(b) Benefits shall be effective with the date of application if the premium specified in paragraph (a) of this subsection has been paid.

(3) Retroactive eligibility as described in 907 KAR 1:605, Section 2(3), shall not apply to a recipient participating in the KCHIP Separate Program.

(4)(a) If a family fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.

(b)1. A KCHIP Separate Program recipient shall be eligible for reenrollment upon payment of the missed premium.

2. If twelve (12) months have elapsed since a missed premium, a KCHIP Separate Program recipient shall not be required to pay the missed premium before reenrolling.

Section 8. Premiums for Transitional Medical Assistance Recipients. (1) A family receiving a second six (6) months of TMA, whose monthly countable earned income is greater than 100 percent of the federal poverty limit, shall pay a premium of thirty (30) dollars per family, per month.

(2) If a TMA family fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the benefit month for which the premium has not been paid unless the family has established to the satisfaction of the department that good cause existed for failure to pay the premium on a timely basis. Good cause shall exist under the following circumstances:

(a) An immediate family member living in the home was institutionalized or died during the payment month;

(b) The family was victim of a natural disaster including flood, storm, earthquake, or serious fire;

(c) The caretaker relative was out of town for the payment month; or

(d) The family moved and reported the move timely, but the move resulted in:

1. A delay in receiving the billing notice; or
2. Failure to receive the billing notice

Section 9. Premiums for Medicaid Works Individuals. (1)(a) A Medicaid works individual shall be required to pay a monthly premium based on income used to determine eligibility for the program.

(b) The monthly premium shall be:

1. Thirty-five (35) dollars for an individual whose income is greater than 100% but no more than 150% of the FPL;

2. Forty-five (45) dollars for an individual whose income is greater than 150% but no more than 200% of the FPL; and

3. Fifty-five (55) dollars for an individual whose income is greater than 200% but no more than 250% of the FPL.

(2) An individual whose family income is equal to or below 100% of the FPL shall not be required to pay a monthly premium.

(3) A Medicaid works individual shall be required to begin paying a premium with the first full month of benefits after the month of application.

(4) Benefits shall be effective with the date of application if the premium specified in paragraph (1) of this section has been paid.

(5) Retroactive eligibility pursuant to 907 KAR 1:605, Medicaid procedures for determining initial and continuing eligibility, Section 2(3) shall not apply to a Medicaid works individual.

(6) If a recipient fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.

(7) A Medicaid works individual shall be eligible for reenrollment upon payment of the missed premium providing all other technical eligibility, income, and resource standards continue to be met.

(8) If twelve (12) months have elapsed since a missed premium, a Medicaid works individual shall not be required to pay the missed premium before reenrolling.

Section 10. Notices and Collection of Premiums. (1) Premiums shall be collected in accordance with Sections 7 and 8 of this administrative regulation.

(2) The department shall give advance written notice of the:

(a) Premium amount; and

(b) Date the premium is due.

(3) To continue to receive benefits, a family shall pay a premium:

(a) In full; and

(b) In advance.

(4) If a family pays the required premiums semiannually or quarterly in advance, they shall receive a ten (10) percent discount.

Section 11 [40:] Provisions for Recipients in Medicaid-Managed Care. (1) A managed care entity:

(a) Shall not impose on a recipient receiving services through a managed-care entity operating in accordance with 907 KAR 1:705 a copayment, coinsurance or premium that exceeds a copayment, coinsurance or premium established in this administrative regulation; and

(b) May impose upon a recipient referenced in paragraph (a) of this subsection:

1. A lower copayment, coinsurance or premium than established in this administrative regulation; or

2. No copayment, coinsurance or premium.

(2) A six (6) month guarantee of eligibility as described in 907 KAR 1:705, Section 3(6) shall not apply to a recipient required to pay a premium pursuant to Section 7 of this administrative regulation.

Section 12 [44:] Freedom of Choice. In accordance with 42 C.F.R. 431.51, a recipient may obtain services from any qualified provider who is willing to provide services to that particular recipient.

Section 13 [42:] Notice of Discontinuance, Hearings, and Appeal Rights.

(1) The department shall give written notice of, and an opportunity to pay, past due premiums prior to discontinuance of benefits for nonpayment of a premium.

(2)(a) If a family's income has declined, the family shall submit documentation showing the decline in income.

(b) Following receipt of the documentation, the department shall determine if the family is required to pay the premiums established in Section 7 or 8 of this administrative regulation using the new income level.

(c) If the family is required to pay the premium and the premium has not been paid, the benefits shall be discontinued in accordance with Section 7(4)(a) or 8(2) of this administrative regulation.

(d) If the family is not required to pay the premium, benefits shall be continued under an appropriate eligibility category.

(3) The department shall provide the recipient with an opportunity for a hearing in accordance with 907 KAR 1:560 upon discontinuing benefits for nonpayment of premiums.

(4) An appeal of a department decision regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1.560.

SHAWN M. CROUCH, Commissioner  
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 15, 2007

FILED WITH AGENCY: November 20, 2007 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008 at 9 a.m. in the Cafeteria on the first floor of the Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone: (502) 564-7905, fax: (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Stuart Owen (502) 564-6204 or Lisa Lee (502) 564-6890

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cost-sharing provisions for Medicaid and Kentucky Children's Health Insurance Program (KCHIP) recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish cost-sharing provisions for Medicaid and KCHIP recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.6312(5) and Pub.L. 109-171 (aka the Deficit Reduction Act of 2005) by establishing cost-sharing provisions regarding Medicaid and KCHIP recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists and will continue to assist in the effective administration of the authorizing statutes by establishing the cost-sharing provisions related to Medicaid and KCHIP recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment results from a congressional initiative to encourage states to adopt the option of allowing individuals with disabilities to purchase Medicaid coverage that is necessary to enable such individuals to maintain employment. The initiative creates a new Medicaid eligibility group known as Medicaid works individuals. Currently, individuals receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) who choose to work, lose Medicaid health benefits because their income exceeds the allowable limit. This initiative will allow individuals with disabilities who choose to work and whose income is less than or equal to 250% of the federal poverty level the opportunity to purchase Medicaid coverage by paying a premium. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and reapply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by

working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The amendment also establishes premiums which are tiered based on federal poverty levels. In addition to establishing Medicaid works policy this administrative regulation corrects a prior inadvertent mistake by eliminating the ophthalmological and optometric office visit cost sharing for the comprehensive choices and optimum choices individuals.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to extend Medicaid coverage to individuals with disabilities who work. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The ophthalmological and optometric office visit cost sharing elimination is necessary to correct a prior inadvertent mistake.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B) and Pub.L. 106-170

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B) and Pub.L. 106-170.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect individuals with disabilities between the ages of sixteen (16) and sixty-five (65) who choose to work and whose income is less than or equal to 250% of the federal poverty level.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Individuals choosing Medicaid coverage via the Medicaid works eligibility option must pay a monthly premium in order to receive benefits under this program. In addition, recipients must pay nominal copayments for specified services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Members eligible via the Medicaid works option will be subject to pharmacy and medical copayments that are capped at \$225 each per year per recipient. Therefore, recipients the maximum amount of co-payments per recipient will be \$450 per year. In addition, recipients will be responsible for a monthly premium based on income levels. Premiums range from thirty-five (35) dollars to fifty-five (55) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals eligible via the Medicaid works option will receive pharmacy and medical benefits through the Medicaid program. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and reapply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the system modifications will cost \$36,275.

(b) On a continuing basis DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year; however, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. Additionally, DMS anticipates that sixty-five (65) percent of recipients expected to enroll for coverage via the Medicaid works option will already be enrolled in another Medicaid program. Considering all factors, DMS projects total annual costs to be \$211,200, of which \$147,840 would be federal funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. Federal funds authorized under the Social Security Act, Title XIX, and matching funds of general fund appropriations and collections will be used to fund the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in funding will be necessary as DMS anticipates any increased cost will be absorbed within the existing Medicaid budget.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation increases and imposes certain designated cost-sharing requirements.

(9) Tiering Is tiering applied? This administrative regulation includes tiering in order to tailor the cost-sharing provisions to individual medical needs and circumstances and to assist in transforming the Medicaid program in conjunction with a related administrative regulation 907 KAR 1:900 (KyHealth Choices Benefit Packages). The transformed program provides innovative opportunities to Medicaid and Kentucky Children's Health Insurance Program (KCHIP) beneficiaries which will promote healthy lifestyles, personal accountability and responsible program governance for a healthier Commonwealth.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 U.S.C. 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 U.S.C. 1396 et. seq. This administrative regulation complies with federal statutes and regulations, including Pub.L. 109-171, governing the Medicaid program including the domain of recipient cost sharing.

2. State compliance standards. This administrative regulation complies with KRS 205.6312(5) by establishing cost-sharing provisions for Medicaid recipients, their spouses, or parents, under the provisions of Section 1916 of Title XIX of the Federal Social Security Act, 42 U.S.C. sec. 1396o. This administrative regulation complies with KRS 205.6485(1) by establishing the premium contribution per family of health insurance coverage available under the Kentucky Children's Health Insurance Program.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation establishes cost-sharing provisions for Medicaid recipients, their spouses, or parents, under the provisions of Section 1916 of Title XIX of the Federal Social Security Act, 42 U.S.C. sec. 1396o, and Public Law 109-171.4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment is necessary to assist in transforming the Medicaid Program in conjunction with a related administrative regulation 907 KAR 1:900 (KyHealth Choices Benefit Packages). This action is necessary to maintain the viability of the Medicaid Program, to render it better oriented to recipient individual needs while best

utilizing the resources available to the Medicaid Program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect an organization that chooses to hire an individual with a disability.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f) and 42 U.S.C. d(q)(2)(B) and Pub.L. 106-170. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates the enhanced coverage may result in additional cost; however, the measures are necessary to enhance access to health services. DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year. However, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. In addition, research shows that sixty-five (65) percent of individuals expected to participate in this option were already enrolled in another Medicaid program. DMS anticipates offsets in premiums and, due to the fact that approximately sixty-five (65) percent of recipients in this program would move from another Medicaid Program, total annual costs are expected to be \$211,200, of which \$147,840 would be federal funds.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the enhanced coverage may result in additional cost; however, the measures are necessary to enhance access to health services. DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year. However, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. In addition, research shows that sixty-five (65) percent of individuals expected to participate in this option were already enrolled in another Medicaid Program. DMS anticipates offsets in premiums and, due to the fact that approximately sixty-five (65) percent of recipients in this program would move from another Medicaid program, total annual costs are expected to be \$211,200, of which \$147,840 would be federal funds.

Note: If specific dollar estimates cannot be determined, provide



a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-)  
Expenditures (+/-)  
Other Explanation:

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**Division of Physicians and Specialty Services**  
**(Amendment)**

**907 KAR 1:631. Reimbursement of Vision Program services.**

RELATES TO KRS 205.520, 42 C.F.R. 440.40, 440.60, 447 Subpart B, 42 U.S.C. 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), [EO-2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 0, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [the method for determining a] reimbursement provisions for vision services [for a Vision Program service]

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designated agent.

(2) "Global Insight Index" means an indication of changes in health care costs from year to year developed by Global Insight.

(3) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(4) "Ophthalmic dispenser" means a physician, optician, or optometrist, who is licensed to prepare and dispense lenses and eyeglasses in accordance with an original, written prescription.

(5) [(3)] "Resource-based relative value scale unit" or "RBRVS unit" means a value based on the service which takes into consideration the practitioners' work, practice expenses, liability insurance, and a geographic factor based on the prices of staffing and other resources required to provide the service in an area relative to national average price.

Section 2. Reimbursement for Covered Procedures and Materials for Optometrists. (1) With the exception of materials or a laboratory service, reimbursement for a covered service, within the optometrist's scope of licensure, shall be based on the optometrist's usual and customary actual billed charges up to the fixed upper limit per procedure established by the department using the Kentucky Medicaid fee schedule, specified in 907 KAR 3.010, Section 2(2)(2+), developed from a resource-based relative value scale (RBRVS) on parity with physicians.

(2) If an RBRVS based fee has not been established, the department shall set a reasonable fixed upper limit for the procedure. The upper limit shall be determined following a review of rates paid for the service by three (3) other sources. The average of these rates shall be compared with similar procedures paid by the department to set the upper limit for the procedure.

(3) With the exception of the following dispensing services, the department shall use the Kentucky conversion factor for "all other services" as established in 907 KAR 3.010, Section 3(2)(b)(2+):

- (a) Fitting of spectacles;
- (b) Special spectacles fitting; and
- (c) Repair and adjustment of spectacles.

(4) Reimbursement for a dispensing service fee or a repair service fee shall be as follows:

Procedure	Upper Limit
92340 (Fitting of spectacles)	\$33

92341 (Fitting of spectacles)	\$38
92352 (Special spectacles fitting)	\$33
92353 (Special spectacles fitting)	\$39
92370 (Repair & adjust spectacles)	\$29

(5) The department shall:

(a) Reimburse for:

- 1. A single vision lens at twenty-eight (28) dollars per lens;
- 2. A bifocal lens at forty-three (43) dollars per lens; and
- 3. A multi-focal lens at fifty-six (56) dollars per lens; and

(b) Annually adjust the rates established in paragraph (a) of this subsection by the Global Insight Index.

(6)(a) The department shall reimburse for frames or a part of frames (not lenses) [Reimbursement for eyeglasses or a part of eyeglasses shall be made] at the optical laboratory cost of the materials not to exceed the upper limit for materials as established by the department.

(b) The upper payment limit for frames shall be fifty (50) dollars.

(c) An optical laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipient's medical records for postpayment review.

(7)(a) [(6)] Reimbursement for a covered clinical laboratory service shall be based on the Medicare allowable payment rates.

(b) For a laboratory service with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

Section 3. Maximum Reimbursement for Covered Procedures and Materials for Ophthalmic Dispensers. Reimbursement for a covered service within the ophthalmic dispenser's scope of licensure shall be in accordance with Section 2 of this administrative regulation.

Section 4. Reimbursement Limitations. (1) A telephone consultation shall be excluded from payment.

(2) Contact lenses shall be excluded from payment.

(3) Safety glasses shall be covered if proof of medical necessity is documented.

(4) A prism, if medically necessary, shall be added within the cost of the lenses.

(5) A press-on prism shall be excluded from payment.

Section 5. Third Party Liability. Nonduplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

Section 6. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

SHAWN M. CROUCH, Commissioner  
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 20, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008, at 9 a.m. in the Cabinet for Health and Family Services Health Services Board Room, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative

regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-6204

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to vision service reimbursement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws that require provision of vision services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes. This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the limitations established in KRS 205.560(1) for the provision of vision services to Medicaid recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment establishes flat rate reimbursement for lenses as follows: twenty eight (28) dollars per lens for a single lens, forty three (43) dollars per lens for a bifocal lens and fifty six (56) dollars per lens for a multi-focal lens and abolishes the prior requirement that a provider submit documentation of acquisition cost for reimbursement purposes.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to reduce vision provider administrative burden and consequently encourage provider participation; thus, enhancing recipient access to care.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by reducing vision provider administrative burden and consequently encourage provider participation; thus, enhancing recipient access to care.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by reducing vision provider administrative burden and consequently encourage provider participation; thus, enhancing recipient access to care.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect vision service providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities are not required to take any action to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed on regulated entities as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Vision service providers will benefit by the reduction of their administrative burden which in turn should encourage provider participation and benefit recipients via increased access to care.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates the amendments to the administrative regulation to cost DMS approximately \$489,000 (\$340,000 federal funds and \$149,000 state funds) annually.

(b) On a continuing basis: DMS anticipates the amendments to the administrative regulation to cost DMS approximately \$489,000 (\$340,000 federal funds and \$149,000 state funds) annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Lenses are reimbursed differently due to the varied complexity of lens development (a single lens is not as complex as a bifocal lens which is not as complex as a multi-focal lens).

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No local government entity is affected; however, the Department for Medicaid Services is affected.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. State laws authorization this action include 194A.030(2), 194A.050(1), 205.520(3). Federal regulations authorization this action include 42 C.F.R. 441.30, 42 C.F.R. 447.200 and 42 C.F.R. 447.204.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates the amendments to the administrative regulation to cost DMS approximately \$489,000 (\$340,000 federal funds and \$149,000 state funds) annually.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the amendments to the administrative regulation to cost DMS approximately \$489,000 (\$340,000 federal funds and \$149,000 state funds) annually.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-)

Other Explanation: No additional expenditures are necessary to implement this amendment.

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**Division of Financial Management**  
**(Amendment)**

**907 KAR 1:640. Income standards for Medicaid.**

RELATES TO: KRS 205.520, 38 U.S.C. 5503, 42 U.S.C. 1396j(b), 1382a, 1397aa, 9902(2)  
 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 435, 42 U.S.C. 1396a, b, d, 1397aa, Pub. L. 106-170

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with 42 U.S.C. 1396 through 1396v. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the income standards by which eligibility is determined.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or disabled.

(2) "AFDC" means the Aid to Families with Dependent Children Program as it existed on July 16, 1996.

(3) "Child" means a person who:

(a) 1. a. Is under the age of eighteen (18); or

b. Is under the age of nineteen (19) if the person is:

(i) In high school or the same level of vocational or training school; and

(ii) Expected to graduate before or during the month of his 19th birthday;

2. Is not self-supporting;

3. Is not a member of the Armed Forces of the United States; and

4. If previously emancipated by marriage, has returned to the home of his parents or to the home of another relative; or

(b) Has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(l)(1).

(4) "Family alternatives diversion payment" means a lump sum payment made to a K-TAP applicant to meet short-term emergency needs.

(5) "Federal register" means the daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.

(6) "Incapacity" means a condition of mind or body making a parent physically or mentally unable to provide the necessities of life for a child.

(7)(6) "Income" means money received from statutory benefits (including Social Security, Veteran's Administration pension, black lung benefits, or railroad retirement benefits), pension plans, rental property, investments, or wages for labor or services.

(8)(7) "Lump sum income" means money received at one (1) time which is normally considered as income, including accumulated back payments from Social Security, unemployment insurance, or workman's compensation, back pay from employment, money received from an insurance settlement, gift, inheritance, or lottery winning, non-recurring proceeds from a bankruptcy proceeding, or money withdrawn from an IRA, KEOGH plan, deferred compensation, tax deferred retirement plan, or other tax deferred asset.

(9) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(g)(2)(B), would be considered to be receiving supplement security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets income standards established in this administrative regulation; and

(e) Meets resource standards established in 907 KAR 1:645, Resource standards for Medicaid.

(10)(9) "Minor parent" means a parent under the age of twenty-one (21).

(11)(9) "Official poverty income guidelines" means the poverty income guidelines which are:

(a) Updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 U.S.C. 9902(2); and

(b) The latest poverty guidelines available as of March 1 of the particular state fiscal year.

(12)(40) "SSI" means Supplemental Security Income Program.

Section 2. Income Limitations. (1) For the medically needy as described in 907 KAR 1:011, Technical eligibility requirements, income shall be determined by comparing adjusted income as required by Section 3 of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse, and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	\$2,600	\$217
2	3,200	267
3	3,700	308
4	4,600	383
5	5,400	450
6	6,100	508
7	6,800	567

For each additional family member, \$720 annually or sixty (60) dollars monthly shall be added to the scale.

(2) The following special factors shall be applicable for a pregnant woman or child eligible pursuant to 42 U.S.C. 1396a(e):

(a) A pregnant woman or a child under age one (1) shall have family income not exceeding 185 percent of the official poverty income guidelines;

(b) A child age one (1) or over but under age six (6) shall have family income not exceeding 133 percent of the official poverty income guidelines;

(c) A child born after September 30, 1983, who has attained six (6) years of age but has not attained nineteen (19) years of age shall have family income not exceeding 100 percent of the official poverty income guidelines;

(d) A pregnant woman or child who would be eligible under provisions of 42 U.S.C. 1396a(l) or 1397j(b) except for income in excess of the allowable standard shall not become eligible by spending down to the official poverty guidelines as described in Section 9 of this administrative regulation;

(e) A change of income that occurs after the determination of eligibility of a pregnant woman shall not affect the pregnant woman's eligibility through the remainder of the pregnancy including the postpartum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy;

(f) A targeted low-income child as specified in 907 KAR 1:011, Technical eligibility requirements, Section 2(3)(h), shall have family income not exceeding 150 percent of the official poverty income guidelines.

(3) The following special income limits and provisions shall be applicable for a determination of eligibility of a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled working individual, or Medicare qualified individual.

(a) A qualified Medicare beneficiary shall have income not exceeding 100 percent of the official poverty income guidelines.

(b) A specified low-income Medicare beneficiary shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

(c) A Medicare qualified individual shall have income greater than 120 percent of the official poverty income guidelines but less than or equal to 135 percent of the official poverty income guidelines.

(d) A qualified disabled working individual shall have income not exceeding 200 percent of the official poverty income guidelines.

(4) Income shall be limited to the allowable amounts for the SSI Program for:

(a) A child who lost eligibility for supplemental security income benefits due to the change in the definition of childhood disability as established in 42 U.S.C. 1396a(a)(10); or

(b) A person with hemophilia who received a class action settlement as established in 42 C.F.R. 435.122.

(5) Income shall be limited to the allowable amounts for the State Supplementation Program for a pass through recipient as established in 42 C.F.R. 435.135.

(6) The following special income factors shall apply for a Medicaid works individual:

(a) Income for a Medicaid works individual's spouse shall not exceed \$45,000 per year;

(b) A Medicaid works individual's unearned income shall be less than the SSI standard plus twenty (20) dollars; and

(c) The combination of earned and unearned income for a Medicaid works individual must be less than 250% of the federal poverty level as listed and updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

Section 3. Income Disregards. In comparing income with the scale established in Section 2 of this administrative regulation, gross income shall be adjusted as follows:

(1) In an AFDC or family related Medicaid case, the standard work expense of an adult member or out-of-school child shall be deducted from gross earnings. For a person with either full-time or part-time employment, the standard work expense deduction shall be ninety (90) dollars per month. Earnings of an individual attending school who is a child or parent under age nineteen (19) or a child under age eighteen (18) who is a high school graduate shall be disregarded.

(2) In an AFDC or family related Medicaid case, a dependent child care work expense shall be allowed for a child who is living in the home of the caretaker and is related to the caretaker in accordance with 907 KAR 1.011, Technical eligibility requirements, Section 5(9)(b), for full-time and part-time employment.

(a) The dependent child care work expense shall be deducted after all other disregards have been applied.

(b) The dependent child care work expense allowed shall not exceed, per month:

1. \$200 for full-time or part-time employment per child under age two (2); and

2. \$175 for full-time employment or \$150 for part-time employment per:

a. Child age two (2) or above; or

b. Incapacitated adult.

(3) For an AFDC-related Medicaid case, a thirty (30) dollar and one-third (1/3) deduction of earned income shall be allowed in accordance with 921 KAR 2:016.

(4) Income disregards for:

(a) [An] an ABD Medicaid case shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b).

(b) A Medicaid works individual shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b); income disregards shall be those applicable in the federal SSI program established in 42 U.S.C. 1382a(b).

Section 4. Income of the Stepparent or Parent of a Minor Parent referred to as a "Grandparent". An incapacitated stepparent's income, or a grandparent's income, shall be considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. If the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income shall be considered available to the spouse or

the grandparent's gross income shall be considered available to the minor parent in accordance with the requirements established in this section. The following disregards and exclusions from income shall be applied:

(1) The first ninety (90) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time;

(2) An amount equal to the appropriate income limitations scale established in Section 2 of this administrative regulation for the appropriate family size, for the support of the stepparent or grandparent and other individuals (not including the spouse or minor parent) living in the home whose needs are not taken into consideration in the Medicaid eligibility determination but are claimed by the stepparent or grandparent as dependents for purposes of determining federal personal income tax liability;

(3) Any amount actually paid by the stepparent or grandparent to an individual not living in the home who is claimed by him as a dependent for purposes of determining his personal income tax liability;

(4) A payment by the stepparent or grandparent for alimony or child support with respect to an individual not living in the household;

(5) Income of a stepparent or grandparent receiving SSI; and

(6) Verified medical expenses for the stepparent or grandparent and his dependents in the home.

Section 5. Lump Sum Income. For a Medicaid case, lump sum income shall be considered as income in the month received.

Section 6. Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill an approved plan for achieving self-support (PASS), impairment related work expense (IRWE) deduction, or the blind work expense (BWE) deduction shall be excluded from consideration.

(2) A payment or benefit from a federal statute, other than SSI benefits, shall be excluded from consideration as income if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.

(3) A cash payment intended specifically to enable an applicant or recipient to pay for medical or social services shall not be considered as available income in the month of receipt.

(4) A Federal Republic of Germany reparation payment shall not be considered available in the eligibility or post eligibility treatment of income of an individual in a nursing facility or hospital or who is receiving home and community based services under a waiver.

(5) A social security cost of living adjustment on January 1 of each year shall not be considered as available income for a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled working individual or Medicare qualified individual until after the month following the month in which the official poverty guideline promulgated by the Department of Health and Human Services U.S. Government is published.

(6) Any amount received from a victims compensation fund established by a state to aid victims of crime shall be excluded as income.

(7) A veteran or the spouse of a veteran residing in a nursing facility who is receiving a Veterans Administration (VA) benefit shall have ninety (90) dollars:

(a) Excluded as income in the Medicaid eligibility determination; and

(b) Excluded as income in the post eligibility determination process.

(8) Veterans Administration payments for unmet medical expenses (UME) and aid and attendance (A&A) shall be excluded in a Medicaid eligibility determination for a veteran or the spouse of a veteran residing in a nursing facility.

(a) Veterans Administration payments for unmet medical expenses (UME) and aid and attendance (A&A) shall be excluded in the post eligibility determination for a veteran or the spouse of a veteran residing in a nonstate-operated nursing facility.

(b) Veterans Administration payments for unmet medical expenses (UME) and aid and attendance (A&A) shall not be excluded in the post eligibility determination process for a veteran or the

spouse of a veteran residing in a state-operated nursing facility.

(9) An Austrian Social Insurance payment based, in whole or in part, on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.

(10) An individual retirement account, KEOGH plan, or other tax deferred asset shall be excluded as income until withdrawn.

(11) Disaster relief assistance shall be excluded as income.

(12) Income which is exempted from consideration for purposes of computing eligibility for the comparable money payment program (AFDC and SSI) shall be excluded ~~(exempted from consideration by the department)~~.

(13) In accordance with 42 C.F.R. 435.122 and Section 4735 of Pub.L. 105-33, a payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded as income.

(14) In accordance with 42 C.F.R. 435.122, any payment received by a person with hemophilia from a class action law suit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded as income.

(15) Family alternatives diversion payments shall be excluded as income.

(16) For an AFDC or family-related Medicaid case, a Medicaid recipient shall have the option to receive a one (1) time exclusion of two (2) months of earned income for new employment or increased wages acquired after approval and reported timely.

(17) For an AFDC-related or a family-related Medicaid case, interest and dividend income shall be excluded.

(18) All monies received by an individual from the Tobacco Settlement between the states and tobacco manufacturers shall be excluded.

(19) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1936p(d)(4) and 907 KAR 1:650, Trust and transferred resource requirements for Medicaid, Section 3(5), shall be excluded.

**Section 7. Consideration of State Supplementary Payments.** For an individual receiving a state supplementary payment, that portion of the individual's income which is in excess of the basic maintenance standard (established in Section 2(1) of this administrative regulation) shall be applied to the special need which results in the supplementary payment.

**Section 8. Pass-through Cases.** (1)(a) An increase in a Social Security payment shall be disregarded in determining eligibility for Medicaid benefits if:

1. The increase is a cost of living increase; and
2. The individual would otherwise be eligible for an SSI benefit or state supplementary payment.

(b) An individual who would otherwise be eligible for an SSI benefit or state supplementary payment shall remain eligible for the full scope of program benefits with no spend-down requirements, as established in Section 9 of this administrative regulation.

(2) For an individual who applied by July 1, 1988, the additional amount specified in 42 U.S.C. 1383c(b) shall be disregarded, meaning that amount of Social Security benefits to which a specified widow or widower was entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) an individual would be eligible for federal SSI benefits.

**Section 9. Spend-down Provisions.** (1) A technically eligible individual or family shall not be required to utilize protected income for medical expenses before qualifying for Medicaid.

(2) An individual with income in excess of the basic maintenance scale established in Section 2(1) of this administrative regulation may qualify for Medicaid in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

(3) Medical expenses incurred in a period prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income if the medical expenses remain unpaid at the beginning of the quarter and have not previously been used as

spend-down expenses.

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 15, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008 at 9 a.m. in the Cafeteria on the first floor of the Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-6204 or Lisa Lee (502) 564-6890

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to Medicaid eligibility income standards.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to Medicaid eligibility income standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to Medicaid eligibility income standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to Medicaid eligibility income standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment results from a congressional initiative to encourage states to adopt the option of allowing individuals with disabilities to purchase Medicaid coverage that is necessary to enable such individuals to maintain employment. The initiative creates a new Medicaid eligibility group known as Medicaid works Individuals. Currently, individuals receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) who choose to work, lose Medicaid health benefits because their income exceeds the allowable limit. This initiative will allow individuals with disabilities who choose to work and whose income is less than or equal to 250% of the federal poverty level the opportunity to purchase Medicaid coverage by paying a premium. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The special income factors established in this administrative regulation

for Medicaid works individuals exceed those established for other recipients and result from a review of other states' standards as well as feedback from the advocate community.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to extend Medicaid coverage to individuals with disabilities who work. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and reapply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The special income factors established in this administrative regulation for Medicaid works individuals exceed those established for other recipients and result from a review of other states' standards as well as feedback from the advocate community.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect individuals with disabilities between the ages of sixteen (16) and sixty-five (65) who choose to work and whose income is less than or equal to 250% of the federal poverty level.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Individuals choosing Medicaid coverage via this option must pay a monthly premium in order to receive benefits under this program. In addition, recipients must pay nominal copayments for specified services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Members eligible via the Medicaid works option will be subject to pharmacy and medical copayments that are capped at \$225 each per year per recipient. Therefore, the maximum amount of copayments per recipient will be \$450 per year. In addition, recipients will be responsible for a monthly premium based on income levels. Premiums range from thirty-five (35) dollars to fifty-five (55) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals eligible via the Medicaid works option will receive pharmacy and medical benefits through the Medicaid program. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The special income factors established in this administrative regulation for Medicaid works individuals exceed those established for other recipients and result from a review of other states' standards as well as feedback from the advocate community.

(5) Provide an estimate of how much it will cost to implement

this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the system modifications will cost \$36,275.

(b) On a continuing basis: DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year; however, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. Additionally, DMS anticipates that sixty-five (65) percent of recipients expected to enroll for coverage via the Medicaid works option will already be enrolled in another Medicaid Program. Considering all factors, DMS projects total annual costs to be \$211,200, of which \$147,840 would be federal funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act, matching funds from general fund appropriations, and monthly premium payments made by recipients participating in the program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding will be necessary as DMS anticipates any increased cost will be absorbed within the existing Medicaid budget.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes monthly premium fees for recipients eligible via the Medicaid works option.

(9) Tiering: Is tiering applied? Tiering is applied to monthly premium amounts. The monthly premium is based on income brackets in order to make the program affordable to individuals in the lower income brackets. Recipients whose monthly income is below 100% of the federal poverty level will pay no premium while recipients above this level will vary with each increase of fifty (50) percent or more.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Centers for Medicare and Medicaid Services (CMS) does not mandate that state Medicaid programs cover working individuals who are disabled; however, relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. CMS does not mandate that state Medicaid programs cover working individuals who are disabled; however, relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170. Provisions established in this administrative regulation conform to the federal requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, than federal, requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, than federal, requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will



affect an organization that chooses to hire an individual with a disability.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. d(q)(2)(B), and Pub.L. 106-170. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that the Medicaid Management Information System (MMIS) modifications associated with this initiative will cost approximately \$36,275

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the enhanced coverage may result in additional cost; however, the measures are necessary to enhance access to health services. DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year. However, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. In addition, research shows that sixty-five (65) percent of individuals expected to participate in this option were already enrolled in another Medicaid Program. DMS anticipates offsets in premiums and, due to the fact that approximately sixty-five (65) percent of recipients in this program would move from another Medicaid program, total annual costs are expected to be \$211,200, of which \$147,840 would be federal funds.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Administration and Financial Management**  
**(Amendment)**

**907 KAR 1:645. Resource standards for Medicaid.**

RELATES TO: KRS 205.520, 42 C.F.R. Part 435, 38 U.S.C. 5503, 42 U.S.C. 1396a, b, d, 1397j(b), p, Pub. L. 109-171

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 435.840, 435.843, and 42 U.S.C. 1396a(l)(3), d, Pub. L. 106-170

**NECESSITY, FUNCTION, AND CONFORMITY:** The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the resource standards for determining eligibility for Medicaid

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or has a disability.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Homestead" means property which an individual:

(a) Has an ownership interest in; and

(b) Uses as his or her principal place of residence.

(4) "Individual development account" means an account containing funds for the purpose of continuing education, purchasing a first home, business capitalization, or other purposes allowed by federal regulations or clarifications which meets the criteria established in 921 KAR 2.016, Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).

(5) "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death,

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

(6) "Liquid resource" means cash, savings accounts, checking accounts, money market accounts, certificates of deposit, bonds and stocks.

(7) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B) would be considered to be receiving supplemental security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets income standards established in 907 KAR 1:640, Income standards for Medicaid; and

(e) Meets resource standards established in this administrative regulation.

(8) "Permanent institutionalization" means residing in a nursing facility or intermediate care facility for the mentally retarded and developmentally disabled for six (6) months or more.

(9)(9) "Poverty level guidelines" means the poverty income guidelines updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).

(10)(9) "Real property" means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.

(11)(10) "Resources" mean cash money and other personal property or real property that an individual:

(a) Owns;

(b) Has the right, authority, or power to convert to cash; and

(c) Is not legally restricted for support and maintenance.

(12)(11) "SSI" means the Social Security Administration Program called supplemental security income.

Section 2. Resource Limitations. (1) For the medically needy, as established in 907 KAR 1.011, Technical eligibility requirements, the upper limit for resources for a family size of one (1) and for a family size of two (2) shall be \$2,000 and \$4,000 respectively,

with fifty (50) dollars for each additional member.

(2) For a pregnant woman or a child meeting the following criteria, resources shall be disregarded for:

- (a) A child under age one (1);
- (b) A child who is at least age one (1) but under age six (6);
- (c) A child who is at least age six (6) but under age nineteen (19) who is eligible under federal poverty level guidelines; or
- (d) A targeted low income child, as defined in 42 U.S.C. 1397j(b), from birth to age nineteen (19).

(3) For a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified working disabled individual, or a Medicare qualified individual, resources shall be limited to twice the allowable amount for the SSI Program.

(4) For a pass-through recipient, as established in 907 KAR 1.640, a person with hemophilia who received a settlement in a class action lawsuit as described in 907 KAR 1.011, or a child who lost supplemental security income eligibility due to the change in definition of childhood disability as established in 907 KAR 1.011, Technical eligibility requirements, resources shall be limited to the allowable amounts for the SSI Program.

(5) For an AFDC-related Medicaid case, the resource limit shall be \$1,000.

(6) In accordance with 42 U.S.C. 1396p, an individual shall not be eligible for Medicaid nursing facility services or other Medicaid long-term care services if the individual's equity interest in his or her home exceeds \$500,000 unless:

- (a) The individual has a spouse who is lawfully residing in the individual's home;
- (b) The individual has a child under the age of twenty-one (21) who is lawfully residing in the individual's home; or
- (c) The individual has a child of any age who is blind or permanently and totally disabled who is lawfully residing in the individual's home.

(7) Resources for a Medicaid works individual shall not exceed \$5,000 per individual or \$10,000 per couple.

Section 3. Resource Exclusions (1)(a) A homestead, household or personal effects, and farm equipment shall be excluded from consideration without limitation on value

(b) After permanent institutionalization, property shall cease to be a homestead unless:

- 1. A spouse or other dependent family member continues to reside there; or
- 2. A signed statement verifies that the permanently-institutionalized individual intends to return to the homestead.

The statement shall:

a. Be signed by:

- (i) The permanently-institutionalized individual,
- (ii) A representative payee;
- (iii) A person who has power of attorney for the individual;
- (iv) The individual's guardian; or
- (v) Another legal representative; and

b. Require annual renewal.

(2) For an adult Medicaid case or a Medicaid works individual

(a)1. Equity of \$6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, shall be excluded from consideration.

2. The value of property, including the tools of a tradesperson or the machinery or livestock of a farmer, shall be excluded from consideration as a resource if the property:

- a. Is essential for self-support for the individual or spouse, or family group in the instance of a family with a child; and
- b. Is used in a trade or business or by the individual or member of the family group as an employee.

(b) Except as provided in paragraph (c) of this subsection, equity of \$4,500 in automobiles shall be excluded from consideration.

(c) If an automobile is used as a home, for employment, to obtain medical treatment of a specific or regular medical problem, or is specially equipped for use by an individual with a disability, the total value of the automobile shall be excluded.

(d) A payment or benefit from a federal statutory program, other than an SSI benefit, shall be excluded from consideration as a resource if precluded from consideration in an SSI determination

of eligibility by the specific terms of the statute.

(3) For an ABD Medicaid case:

(a) Real property or nonreal property shall be excluded from consideration if it can be demonstrated the individual is making a reasonable effort to sell the property at fair market value or for other valuable consideration.

(b)1. Nonhome property, which was previously the homestead property of a permanently-institutionalized individual, shall be excluded for six (6) months if there is a verified effort to sell the property at fair market value.

2. Additional time to sell the property may be allowed, on a case-by-case basis, if it can be demonstrated that a reasonable effort to sell the property at fair market value within the specified time frame has failed.

3. Reasonable effort to sell the property shall consist of

a. Listing the property with a real estate agent if the agent:

1. Places a "For Sale" sign on the property which is clearly visible from the nearest public road; and

2. Advertises the property in the local newspaper or on local television or radio stations; or

b. A combination of at least two of the following actions:

1. Advertising the property in the local newspaper or on local television or radio stations,

2. Placing a "For Sale" sign on the property which is clearly visible from the nearest public road;

3. Distributing fliers advertising the property for sale;

4. Posting notices regarding availability of the property on community bulletin boards; or

5. Showing the property to interested parties on a continuing basis.

(c) Proceeds from the sale of a home shall be excluded from consideration for three (3) months from the date of receipt if used to purchase another home.

(4) For an AFDC-related Medicaid case, \$1,000 in resources shall be excluded from consideration.

(5) A burial reserve of up to \$1,500 per individual, which may be in the form of a burial agreement, prepaid burial or similar arrangement, trust fund, life insurance policy, savings account, checking account, or other identifiable fund, shall be excluded from consideration.

(a) For an adult Medicaid case, the cash surrender value of life insurance shall be considered if determining the total value of burial reserves.

(b) If a burial fund is commingled with another fund, the applicant shall have thirty (30) days to separately identify the burial reserve amount.

(c) Interest or other appreciation of value of an excluded burial reserve or space shall be excluded as a resource if the amount is left to accumulate as a part of the burial reserve or space.

(6) A burial trust, burial space, plot, vault, crypt, mausoleum, urn, casket, or other repository which is customarily and traditionally used for the remains of a deceased person shall be excluded from consideration as a countable resource without regard to value.

(7) For a family-related or an AFDC-related Medicaid case, proceeds from the sale of a home shall be excluded from consideration for six (6) months from the date of receipt if used to purchase another home.

(8) Resources of an individual who is blind or has a disability shall be excluded if the resources are included in an approved plan for achieving self-support (PASS).

(9) An individual development account up to a total of \$5,000, excluding interest accruing, shall be excluded from consideration as a resource for an AFDC-related Medicaid case.

(10) Disaster relief assistance shall be excluded from consideration.

(11) Cash or in-kind replacement for repair or replacement of an excluded resource shall be excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(12) A life interest that a Medicaid applicant or recipient has in real estate or other property shall be excluded from consideration as an available resource.

(13) Real property other than the homestead shall be excluded

from consideration if:

- (a) The property is jointly owned and its sale would cause loss of housing for the other owner or owners;
- (b) Its sale is barred by a legal impediment; or
- (c) The owner's reasonable efforts to sell by informing the public of his intention to sell the property at fair market value have been unsuccessful.

(14) A cash payment intended specifically to enable an applicant or recipient to pay for a medical or social service shall not be considered as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it shall be considered a resource.

(15) An amount received which is a result of an underpayment or a retroactive payment of benefits from retirement, survivors, and disability insurance (RSDI) benefits or SSI shall be excluded as a resource for the first six (6) months following the month in which the amount is received.

(16) A federal Republic of Germany reparation payment shall not be considered as an available resource.

(17) An amount received from a victim's compensation fund established by a state to aid victims of crime shall be:

(a) Completely excluded as a resource if the individual can show that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime; or

(b) Excluded as a resource for nine (9) months if the individual can show that the amount was paid for pain and suffering

(18) An Austrian social insurance payment based on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from resource consideration.

(19) An individual retirement account, Keogh plan, or other tax deferred asset shall be excluded as a resource until withdrawn.

(20) A payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded from consideration as an available resource.

(21) A payment received from a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded from consideration as an available resource.

(22) An annuity that is irrevocable and cannot be sold or transferred shall be excluded from consideration as a resource.

**Section 4. Resource Exemptions.** (1) A resource which is exempted from consideration for purposes of computing eligibility for the SSI Program shall be exempted from consideration by the department.

(2) For an AFDC-related or a family-related Medicaid case, all nonliquid resources shall be exempted.

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY: November 15, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008 at 9 a.m. in the Cafeteria on the first floor of the Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Jill Brown, Office of Legal Services, 275

East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Stuart Owen (502) 564-6204 or Lisa Lee (502) 564-6890

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to Medicaid eligibility resource standards.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to Medicaid eligibility resource standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to Medicaid eligibility resource standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to Medicaid eligibility resource standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment results from a congressional initiative to encourage states to adopt the option of allowing individuals with disabilities to purchase Medicaid coverage that is necessary to enable such individuals to maintain employment. The initiative creates a new Medicaid eligibility group known as Medicaid works individuals. Currently, individuals receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) who choose to work, lose Medicaid health benefits because their income exceeds the allowable limit. This initiative will allow individuals with disabilities who choose to work and whose income is less than or equal to 250% of the federal poverty level the opportunity to purchase Medicaid coverage by paying a premium. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and reapply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The resource standards established in this administrative regulation for Medicaid works individuals exceed those established for other recipients and result from a review of other states' standards as well as feedback from the advocate community.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to extend Medicaid coverage to individuals with disabilities who work. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and reapply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The resource standards established in this administrative regulation for Medicaid works individuals exceed those established for other recipients and result from a review of other states' standards as well as feedback from the advocate community.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(f)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective

administration of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect individuals with disabilities between the ages of sixteen (16) and sixty-five (65) who choose to work and whose income is less than or equal to 250% of the federal poverty level.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Individuals choosing Medicaid coverage via this option must pay a monthly premium in order to receive benefits under this program. In addition, recipients must pay nominal copayments for specified services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Members eligible via the Medicaid works option will be subject to pharmacy and medical copayments that are capped at \$225 each per year per recipient. Therefore, recipients the maximum amount of copayments per recipient will be \$450 per year. In addition, recipients will be responsible for a monthly premium based on income levels. Premiums range from thirty-five (35) dollars to fifty-five (55) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals eligible via the Medicaid works option will receive pharmacy and medical benefits through the Medicaid program. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and reapply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The resource standards established in this administrative regulation for Medicaid works individuals exceed those established for other recipients and result from a review of other states' standards as well as feedback from the advocate community.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the system modifications will cost \$36,275.

(b) On a continuing basis: DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year; however, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. Additionally, DMS anticipates that sixty-five (65) percent of recipients expected to enroll for coverage via the Medicaid works option will already be enrolled in another Medicaid Program. Considering all factors, DMS projects total annual costs to be \$211,200, of which \$147,840 would be federal funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act, matching funds from general fund appropriations, and monthly premium payments made by recipients participating in the program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in funding will be necessary as DMS anticipates any increased cost will be absorbed within the existing Medicaid budget.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes monthly premium fees for recipients eligi-

ble via the Medicaid works option.

(9) Tiering: Is tiering applied? Tiering is applied to monthly premium amounts. The monthly premium is based on income brackets in order to make the program affordable to individuals in the lower income brackets. Recipients whose monthly income is below 100% of the federal poverty level will pay no premium while recipients above this level will vary with each increase of fifty (50) percent or more.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

The Centers for Medicare and Medicaid Services (CMS) does not mandate that state Medicaid programs cover working individuals who are disabled; however, relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f), 42 U.S.C. 1396d(q)(2)(B) and Public Law 106-170.

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. CMS does not mandate that state Medicaid programs cover working individuals who are disabled; however, relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f) and 42 U.S.C. 1396d(q)(2)(B), and Pub.L. 106-170. Provisions established in this administrative regulation conform to the federal requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, than federal, requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, than federal, requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect an organization that chooses to hire an individual with a disability.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396b(f) and 42 U.S.C. d(q)(2)(B), and Pub.L. 106-170. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(b) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that the Medicaid Management Information System (MMIS) modifications associated with this initiative will cost approximately \$36,275.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the enhanced coverage may result in additional cost; however, the measures are necessary to enhance access to health services. DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year. However, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. In addition, research shows that sixty-five (65) percent of individuals expected to participate in this option were already enrolled in another Medicaid program. DMS anticipates offsets in premiums and, due to the fact that approximately sixty-five (65) percent of recipients in this program would move from another Medicaid program, total annual costs are expected to be \$211,200, of which \$147,840 would be federal funds.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Administration and Financial Management**  
**(Amendment)**

**907 KAR 1:900. KyHealth Choices benefit plans.**

RELATES TO: KRS 205.520, 205.560, 205.6312, 205.6481-6497, 205.8451, 319A.010, 327.010, 334A.020, 20 C.F.R. 416.2001, 42 C.F.R. 433.56, 435, 436.3, 440.30, 440.40, 440.60, 440.70, 440.110, 440.120, 440.130, 440.170, 441.20, 441.21, 441.35, 441.40, 457.310, 45 C.F.R. 233.100, 42 U.S.C. 416, 423, 1382c, 1383c, 1396a, b, c, d, o, r-6, r-8, 1396a(10)(A), 1396a(a)(52), 1396a(aa), 1396a(l)(1)(B), (C), (D), 1396d(a)(4)(C), 1396d(o), 1396u-1, 1397aa.

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), Pub. L. 106-170, 109-171

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the Medicaid Program KyHealth Choices benefit plans.

Section 1. Definitions. (1) "Benchmark plan" means the Global Choices.

(2) "Benefit plan" means the health plan provided to recipients under comprehensive choices, family choices, global choices, and optimum choices.

(3) "Caretaker relative" means a relative:

(a) With whom a child is, or shall be, placed by the Cabinet for Health and Family Services; and

(b) Who is seeking to qualify as a kinship caregiver.

(4) "Comprehensive choices" means a benefit plan for an individual who:

(a) Meets the nursing facility patient status criteria established

in 907 KAR 1:022;

(b) Receives services through either:

1. A nursing facility in accordance with 907 KAR 1:022;

2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090;

3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160; or

4. The Model Waiver II Program in accordance with 907 KAR 1:595, and

(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R.

(5)

"Department" means the Department for Medicaid Services or its designee.

(6) "Family choices" means a benefit plan for an individual who:

(a) Is covered pursuant to:

1. 42 U.S.C. 1396a(a)(10)(i)(I) and 1396u-1;

2. 42 U.S.C. 1396a(a)(52) and 1396r-6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);

3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);

4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C);

5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or

6. 42 C.F.R. 457.310; and

(b) Has a designated package code of 2, 3, 4, or 5.

(7) "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:

(a) Caretaker relatives who:

1. Receive K-TAP and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. Receive SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(c) Blind individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(d) Disabled individuals who receive SSI and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(f) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022;

(g) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022; [or]

(h) Pregnant women; or

(i) Medicaid works individuals.

(8) "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the Cabinet for Health and Family Services as an alternative to foster care.

(9) "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived

of parental support or care due to:

- (a) Death;
- (b) Continued voluntary or involuntary absence;
- (c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or
- (d) Unemployment of one (1) parent if both parents are in the home.

(10) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(g)(2)(B) would be considered to be receiving supplemental security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets income standards established in 907 KAR 1:640, income standards for Medicaid; and

(e) Meets resource standards established in 907 KAR 1:645, resource standards for Medicaid.

(11) "Model Waiver II" means a department program established in 907 KAR 1:595.

(12)(14) "Optimum choices" means a benefit plan for an individual who:

(a) Meets the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1:022; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and

(c) Has a designated package code of S, T, U, V, W, X, Z, O, or 1.

(13)(12) "Package code" means a unique code which identifies a specific service under each benefit plan.

(14)(13) "Recipient" is defined in KRS 205.8451 and applies to an individual who has been determined eligible to receive benefits under the state's Title XIX or Title XXI Program in accordance with 907 KAR Chapters 1 through 4.

(15)(14) "SSI" means the Social Security Administration program called supplemental security income.

(16)(15) "SSP" means state supplemental payments for individuals who are aged, blind or disabled and in accordance with 921 KAR 2:015.

Section 2. Benefit Plan Assignment. (1)(a) The department shall assign each recipient, including those excluded from mandatory participation pursuant to 42 U.S.C. 1396u-7(a)(2)(B), to an appropriate benefit package. The four (4) benefit plans shall include: comprehensive choices, family choices, global choices, or optimum choices - pursuant to the definitions established in Section 1(4), (6), (7), and (11); and based on the recipient's medical needs or circumstances.

(b) An individual excluded from mandatory participation pursuant to 42 U.S.C. 1396u-7(a)(2)(B):

1. May enroll in the benchmark plan; and

2. Shall be subject to the cost-sharing, service limit, and any other provisions established for the benchmark plan effective beginning with the date the individual requested to be enrolled in the benchmark plan.

(2) If a recipient's medical needs or circumstances evolve to the extent another benefit plan is more appropriate change, the department shall assign the recipient to the more appropriate benefit plan.

(3)(a) A recipient whose medical needs or circumstances are appropriate for the comprehensive or optimum choices benefit plan may elect to not be assigned to the comprehensive or optimum choices benefit plan.

(b) The department shall assign a recipient who elects to not be assigned to the comprehensive or optimum choices benefit plan

to the global choices benefit plan, unless the individual elects to opt out of all coverage.

(4)(a) A recipient may request to be assigned to a different benefit plan by notifying the department.

(b) If a recipient requests to be assigned to a different benefit plan, the department shall examine the recipient's medical needs or circumstances and determine the appropriateness of placing the individual shall be placed in a different benefit plan.

Section 3. Benefit Plan Covered Services and Cost Sharing.

(1) Benefit plan covered service provisions shall be as established in the respective program administrative regulations located in Title 907 KAR.

(2) Benefit plan cost-sharing provisions shall be as established in 907 KAR 1.604, Recipient cost-sharing.

Section 4. Appeals. A recipient may appeal a department decision in accordance with 907 KAR 1:563, Medicaid covered services hearing and appeals.

SHAWN M. CROUCH, Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: November 15, 2007

FILED WITH LRC: November 20, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008 at 9 a.m. in the Cafeteria on the first floor of the Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-6204 or Lisa Lee (502) 564-6890

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to KyHealth Choices benefit plans.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to KyHealth Choices benefit plans.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to KyHealth Choices benefit plans.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to KyHealth Choices benefit plans.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment results from a congressional initiative to encourage states to adopt the option of allowing individuals with disabilities to purchase Medicaid coverage that is necessary to enable such individuals to maintain employment. The initiative



creates a new Medicaid eligibility group known as Medicaid works individuals. Currently, individuals receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) who choose to work, lose Medicaid health benefits because their income exceeds the allowable limit. This initiative will allow individuals with disabilities who choose to work and whose income is less than or equal to 250% of the federal poverty level the opportunity to purchase Medicaid coverage by paying a premium. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to extend Medicaid coverage to individuals with disabilities who work. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 1396a(a)(10), 42 1396b(f), 42 1396d(q)(2)(B), and Pub.L. 106-170.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 U.S.C. 1396a(r)(2) and 42 1396a(a)(10), 42 1396b(f), 42 1396d(q)(2)(B) and Pub L. 106-170.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect individuals with disabilities between the ages of sixteen (16) and sixty-five (65) who choose to work and whose income is less than or equal to 250% of the federal poverty level.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Individuals choosing Medicaid coverage via this option must pay a monthly premium in order to receive benefits under this program. In addition, recipients must pay nominal co-payments for specified services

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Members eligible via the Medicaid works option will be subject to pharmacy and medical co-payments that are capped at \$225 each per year per recipient. Therefore, recipients the maximum amount of co-payments per recipient will be \$450 per year. In addition, recipients will be responsible for a monthly premium based on income levels. Premiums range from thirty-five (35) dollars to fifty-five (55) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals eligible via the Medicaid works option will receive pharmacy and medical benefits through the Medicaid program. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly pre-

mium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially. The Department for Medicaid Services (DMS) anticipates that the system modifications will cost \$36,275.

(b) On a continuing basis: DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year; however, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. Additionally, DMS anticipates that sixty-five (65) percent of recipients expected to enroll for coverage via the Medicaid works option will already be enrolled in another Medicaid program. Considering all factors, DMS projects total annual costs to be \$211,200, of which \$147,840 would be federal funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act, matching funds from general fund appropriations, and monthly premium payments made by recipients participating in the program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding will be necessary as DMS anticipates any increased cost will be absorbed within the existing Medicaid budget.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes monthly premium fees for recipients eligible via the Medicaid works option.

(9) Tiering: Is tiering applied? Tiering is applied to monthly premium amounts. The monthly premium is based on income brackets in order to make the program affordable to individuals in the lower income brackets. Recipients whose monthly income is below 100% of the federal poverty level will pay no premium while recipients above this level will vary with each increase of fifty (50) percent or more.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Centers for Medicare and Medicaid Services (CMS) does not mandate that state Medicaid programs cover working individuals who are disabled, however, relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 1396a(a)(10), 1396b(f), 1396d(q)(2)(B) and Pub.L. 106-170.

2. State compliance standards KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. CMS does not mandate that state Medicaid programs cover working individuals who are disabled, however, relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 1396a(a)(10), 1396b(f) and 1396d(q)(2)(B) and Pub.L. 106-170. Provisions established in this administrative regulation conform to the federal requirements

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, than federal, requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, than federal, requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,

service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect an organization that chooses to hire an individual with a disability.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Relevant provisions for states who choose to offer this coverage are established in 42 U.S.C. 1396a(r)(2) and 42 1396a(a)(10), 42 1396b(f) and 42 d(q)(2)(B), and Pub L. 106-170. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that the Medicaid Management Information System (MMIS) modifications associated with this initiative will cost approximately \$36,275.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the enhanced coverage may result in additional cost; however, the measures are necessary to enhance access to health services. DMS anticipates medical and pharmaceutical costs to be approximately \$912,000 during the first year. However, this amount will be offset by cost sharing in the form of premiums totaling \$108,000. In addition, research shows that sixty-five (65) percent of individuals expected to participate in this option were already enrolled in another Medicaid program. DMS anticipates offsets in premiums and, due to the fact that approximately sixty-five (65) percent of recipients in this program would move from another Medicaid program, total annual costs are expected to be \$211,200, of which \$147,840 would be federal funds.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Aging and Independent Living**  
**Division of Quality Living**  
**(Amendment)**

**910 KAR 1:160. Program and Certification Requirements for the Adult Day and Alzheimer's Respite Program**

RELATES TO: KRS Chapter 13B, 194A.060(2), 194A.700(1),

(2), 205.010(15), 205.201, 205.203, 205.204(1), 205.455, 205.460, [-] 205.465, 205.955, 209.030(2), (3), 216.787, 42 U.S.C. 3001 [et seq.]

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(2), 205.950

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.950 requires the Cabinet for Health and Family Services to promulgate administrative regulations in accordance with KRS Chapter 13A to establish health, safety, and treatment requirements for a certified adult day-care center, and to establish criteria for the certification of these centers. 42 U.S.C. 3001 [et seq.] authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050(1) authorizes the cabinet [for Health Services] to adopt administrative regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the cabinet [for Health Services] as the state agency to administer 42 U.S.C. 3001 [et seq.] in Kentucky. This administrative regulation establishes the adult day and Alzheimer's respite program. [The function of this administrative regulation is to set forth the standards of operation for the adult day and Alzheimer's respite program.]

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Adult day-care center" is defined by KRS 205.010(15).

(3) "Adult day center respite" means respite provided in a group setting outside the home.

(4) [(2)] "Adult day services" means a supportive and therapeutic social program of supervision and care:

(a) 1. Provided to an eligible adult as specified in Section 2 of this administrative regulation; and

2. During a part of the day, but for less than twenty-four (24) hours as established in KRS 205.010(15); and

(b) For:

1. Assistance with self-administration of medication [medications];

2. Personal care services;

3. Self-care training;

4. Social activities; and

5. Recreational opportunities.

(5) [(2)] "Adult day health services" means a licensed program to provide continuous supervision of the client's [participant's] medical and health needs.

(6) [(3)] "Adult day center" means a community-based facility in which adult day supervision is provided in a group setting.

(4) "Alzheimer's disease or [and] related dementing diseases" means [mean] neurological diseases causing gradual and irreversible impairment of intellectual functioning of a sufficient severity to interfere with an individual's daily activities.

(7) [(5)] "Alzheimer's respite" means a therapeutic social program of supervision and care provided to a client [participant] with Alzheimer's disease or related dementing disease to enable the caregiver temporary relief from care giving duties.

(8) "Area plan" means the plan submitted by a district for the approval of the department which releases funds under contract for the delivery of services within the planning and service area.

(9) [(6)] "Assessment" means the collection of information and evaluation about a person's situation and functioning which identifies needs and resources so that a comprehensive plan of care may [can] be developed.

(10) "Assistance with self-administration of medication" is defined by KRS 194A.700(2).

(11) [(7)] "Case management" means:

(a) A process for ensuring that participants receive appropriate, comprehensive, and timely services to meet their needs as identified in the assessment process,

(b) Planning;

(c) Referring the participant to appropriate agencies and individuals in the informal care giving systems;

(d) Monitoring; and

(e) Advocacy through case work activities in order to achieve the best possible resolution of individual needs.

(12) "District" is defined by KRS 205.455(4).

~~(13)(8) "Center respite" means respite provided in a group setting outside the home.~~

(9) "Identifiable space" means space set apart by visible barriers from other activities within the setting

(14) "In-home respite" ~~(14) "In-home respite"~~ means respite provided in the client's [participant's] home.

(15)(14) "Licensed adult day health center" means a program licensed by the Kentucky Cabinet for Health and Family Services in accordance with 902 KAR 20.066.

(16) "Nutrient dense snack" means a snack that contains a high proportion of nutrients in comparison to the number of calories.

(17)(12) "Personal care services" means activities to help participants achieve and maintain good personal hygiene, including assistance with walking, and pursuant to KRS 194A.700(1), eating, grooming, and toileting.

(18)(13) "Plan of care" means a written guide of action:

(a) Developed and agreed upon by the;

1. Client;

2. Primary caregiver, if applicable; and

3. [Participant, the primary caregiver, the director and] Program case manager;

(b) Based upon the participant's needs, goals, and resources; and

(c) Including appropriate services to meet identified needs and achieve objectives

(19)(14) "Reassessment" means the formal reevaluation of the participant's situation and functioning and of the services delivered to identify changes which may have occurred since the last assessment.

(20)(15) "Unit of service" means one-half (1/2) hour of direct service.

Section 2. Eligibility. To participate in the adult day and Alzheimer's respite program [programs], an individual shall:

(1) Be able to respond and share in program activities without health and safety problems to self or others; and

(2) Meet at least one (1) of the following requirements.

(a) Be:

1. Sixty (60) years of age or older;

2. Physically disabled or frail as a result of medical condition or age; and

3. In need of supervision or assistance during part of the day.

(b) Be:

1. Sixty (60) years of age or older;

2. Mentally confused; and

3. In need of supervision;

a. To prevent injury;

b. For proper assurance of [and assure proper] nutrition; and

c. For assistance with self-administration of medication [use].

(c) Be:

1. Sixty (60) years of age or older; and

2. One who, because of emotional or social needs, may benefit from the individualized attention and social structure available through these services which are not otherwise available.

(d) Be:

1. Any age; and

2. Have a diagnosis of probable Alzheimer's or related dementing disease, as confirmed by a written statement from a physician after a diagnostic evaluation

Section 3. Assessment and Case Management. (1)(a) Each applicant for services shall be assessed and certified eligible and in need of services.

(b) A plan of care shall be developed using the completed assessment, with participant involvement to the fullest extent of his abilities.

(2)(a) The client [The participant] shall be referred by the case manager for other needed services identified by the assessment

(b) Case management shall be provided to a client [these participants] receiving multiple services but shall be provided by one (1) service provider only.

(3) The program director shall arrange or provide a formal reassessment at least every six (6) months.

Section 4. Fees and Contributions (1) A case manager shall be responsible for determining fee paying status, using the following criteria:

(a) A fee shall not be assessed for the provision of assessment or case management services

(b) The case manager shall

1. Consider extraordinary out-of-pocket expenses to determine a client's ability to pay; and

2. Document in a case record a waiver or reduction of fee due to the extraordinary out-of-pocket expenses

(c) A fee shall not be assessed to an eligible individual who meets the definition of "needy aged" as governed by KRS 205.010(6).

(d) SSI income or a food stamp allotment shall not be deemed available to other family members.

2. The applicant receiving SSI benefits or a food stamp allotment shall be considered a family of one (1) for the purpose of fee determination.

(2)(a) An eligible person shall be charged a fee determined by the cost of the service unit multiplied by the applicable percentage rate based upon income and size of family using 130% the official poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services.

(b) Service unit cost shall be determined by the state agency or contracting entity in accordance with its contract.

(c) The copayment amount shall be based on the household's percentage of poverty, as follows:

Percentage of Poverty	1 Person	2 Person	3 Person or More
0-129%	0%	0%	0%
130%-149%	20%	0%	0%
150%-169%	40%	20%	0%
170%-189%	60%	40%	20%
190%-209%	80%	60%	40%
210%-229%	100%	80%	60%
230%-249%	100%	100%	80%
250% and above	100%	100%	100%

(3)(a) A contribution from an individual, family, or other entity shall be encouraged.

(b) Suggested contribution or donation rates may be established; however, pressure shall not be placed upon the client to donate or contribute.

(c) Adult day services shall not be withheld from an otherwise eligible individual based upon the individual's failure to voluntarily contribute to support services.

(4) The district shall review and approve the procedure implemented by a service provider for the collecting, accounting, spending, and auditing of fees and donations.

(3)(a) The adult day care program funding formula shall consist of a \$30,000 base for each district, with the remaining amount of funds distributed in proportion to the district's elderly (sixty (60) plus) population in the state.

(b) The department may increase base funding as the need is determined contingent upon available funding.

Section 5. Termination or Reduction of Services (1)(a) A case manager or client shall decide to terminate adult day and Alzheimer's respite services.

(b) Adult day and Alzheimer's respite services may be reduced if

1. The client's condition or support system improves, or

2. A determination that the plan of care specified in Section 3(3) of this administrative regulation cannot be followed.

(2) If adult day and Alzheimer's respite services are terminated or reduced, the case manager shall:

(a) Inform the client of the right to file a request for a hearing in accordance with Section 12 of this administrative regulation;

(b) Notify the client or caregiver of the action taken; and

(c) Assist the client and family in making a referral to another agency, if applicable.

Section 6. Service Provider Responsibilities. (1) [Fee-for-Service.

(1) The following adult day and Alzheimer's respite fee schedule shall be utilized in determining the minimum fee which shall be charged an eligible individual who has received service. The cost of the service unit as determined by the state or contracting entity in accordance with its contract shall be multiplied by the applicable percentage rate based upon income and size of family as set forth below

Adult Day and Alzheimer's Respite Participant Income and Applicable Percentage of Fee		
Annual Income	1 Person	2 Persons
\$8000 and below	0%	0%
\$8001 – \$10150	20%	0%
\$10151 – \$12300	40%	20%
\$12301 – \$14450	60%	40%
\$14451 – \$16650	80%	60%
\$16651 – \$18850	100%	80%
\$18851 – \$20950		100%
For each additional family member, add \$2150.		

(2) In determining the eligible individual's ability to pay a fee, any extraordinary medical or other related expense may be taken into consideration.

(3) SSI income shall not be considered available to other family members. If an applicant is receiving SSI benefits, he shall be considered a family of one (1) for the purpose of fee determination.

Section 6 – Responsibilities of the Service Provider. The service provider shall meet the following general requirements:

(a) Assure that program staff shall treat the client [participant] and caregiver in a respectful and dignified manner, involving them in decisions regarding the delivery of services;

(b) Assure that services are provided in a safe and consistent manner;

(c) Determine each client's fee responsibility based on the sliding fee scale identified in section 4 of this administrative regulation [Provide a unit cost figure to the case manager or assessor to be used as a basis for determining the applicable percentage of the fee schedule];

(d) 1. Collect the fee for service as determined by the case manager or assessor;

2. Fees and donations shall be budgeted and used to increase services;

(e) Maintain a written job description for each paid staff and volunteer position involved in direct service delivery;

(f) Develop and maintain written personnel policies and a wage scale for each job classification;

(g) Designate a supervisor to assure that staff providing adult day services are provided supervision;

(h) Comply with applicable district administrative policies and procedures and service contracts;

(i) Provide access for staff of the district and cabinet for monitoring and evaluation purposes;

(j) Notify a case manager should the service needs of the client change due to:

1. Health;
2. Support services;
3. Family; or
4. Caregiver;

(k) Develop for district approval the following written assur-

ances:

1. A policy and procedure for a client's referral for service to other appropriate programs and services currently provided in the district;

2. A policy and procedure to reach a prospective client through community education and outreach activities;

3. A policy and procedure for volunteer programs to be utilized;

4. A policy and procedure for the periodic monitoring of a client for the appropriateness of adult day services and to assure safety and consistency;

5. A policy and procedure for acceptance of a voluntary contribution and assurance the contribution shall be used to maintain or increase the level of service;

6. A policy and procedure for the reporting of abuse, neglect, and exploitation consistent with KRS 209.030(2) and (3); and

7. A policy and procedure for the manner in which delivery of adult day services shall be provided to an eligible individual [Have and use appropriate procedures for referrals to other service agencies or programs;

(f) Conduct community education and outreach activities to reach prospective participants;

(g) Comply with applicable administrative policies and procedures and service contracts; and

(h) Provide access for staff of the area development district and the cabinet for Health Services for monitoring and evaluation purposes.]

(2) The service provider shall establish written policies and procedures to meet the following program requirements for in-center and adult day center respite services:

(a) Establish a schedule of days and hours of operation;

1. To be posted in a conspicuous place; and

2. With [:] a written copy of the schedule [shall be] given to the client [participant] and the caregiver by program staff;

(b) Operate the program a minimum of four (4) hours per day, three (3) days per week, excluding holiday and emergency closings;

(c) Supervise program activities which [–Supervision] shall be provided by staff or volunteer personnel [volunteers] meeting staff requirements as set forth in Section 9 [7] of this administrative regulation;

(d) Provide:

1. A balance of planned individual and group activities to meet participant's needs, abilities, and interests as determined by the individual plan of care; and

2. An inventory of each client's interests and personal history;

(e) Provide a client [participants] an opportunity to plan and evaluate activities on a monthly basis;

(f) Provide a client [participants] with a choice of activities and an opportunity to refuse to participate in the activity;

(g) Post a monthly calendar of planned activities and available services;

1. In a conspicuous place; and

2. Which shall be retained on site for:

a. Monitoring purposes; and

b. A minimum of two (2) years; [–Records shall be maintained for monitoring purposes.]

(h) Provide assistance, if necessary, with activities of daily living including:

1. Walking;

2. Personal hygiene; and

3. Eating, grooming, and toileting pursuant to KRS 194A.700(1); [Eating;

3. Grooming;

4. Toileting; and

5. Personal hygiene;]

(i) Comply with KRS 194A.700(2) for assistance with [the Office of Aging Services policies and procedures for] self-administration of medications;

(j) Provide a meal that complies with 910 KAR 1.190 [the Office of Aging Services' nutrition program policies if the program is in operation during a normal meal hour. A therapeutic diet shall be available in accordance with a physician's order at licensed adult day centers];

(k) Allow a client [participants], as a supplementary activity to

staff assignments, an opportunity to assist in planning menus;

(l) Offer a nutrient dense snack [nutrient-dense-snacks], water, and other liquids at regularly scheduled times during the day;

(m) 1. Post a monthly calendar of menus in a conspicuous place if meals are provided; and [;]

2. Maintain menus for monitoring purposes;

(n) Provide first aid and make appropriate arrangements for medical care with the client's [participant's] physician or hospital for an accident or medical emergency [accidents or medical emergencies];

(o) Notify the family or other appropriate person of any significant changes in the client's [participant's] mental or physical condition;

(p) Refer a client to a health professional of the client's choice, as needed;

(q) Establish linkages with another community agency and institution to better coordinate services;

(r) Assist a client and the client's family in identifying and accessing a community agency for;

[p] Refer participants to health professionals of their choice, as needed;

(q) Establish linkages with other community agencies and institutions to better coordinate services;

(r) Assist participants and their families in identifying and accessing community agencies for;

1. Financial;
2. Social;
3. Recreational;
4. Educational;
5. Medical; and
6. Other services;

(s) Assist the family in arranging transportation; and

(t) Notify the district immediately of a negative incident or accident involving a client, staff or volunteer personnel;

(u) Comply with provisions of 910 KAR 1:220, Section 11, for self-administration of medications; and

(v) Have written complaint procedures to register complaints that shall;

1. Include the address and phone number of the department;
2. Be posted in a conspicuous place; and
3. Be provided to each client.
4. Provide a written report to the district if requested.

(3) An adult day health center shall;

(a) Be monitored and licensed by the Office of the Inspector General; and

(b) Comply with licensure requirements for adult day health services in accordance with 902 KAR 20:066. (Notify the area agency on aging immediately of a negative incident or accident involving a participant or employee, providing a written report if requested.)

(3) The service provider operating a licensed adult day health center shall-

- (a) Comply with licensure requirements of 902 KAR 20:066;
- (b) Assure that health care needs are met;
- (c) Provide self-care training;
- (d) Provide personal care services; and
- (e) Maintain a medication sheet in accordance with 902 KAR 20:066 if medications are administered to a participant.]

(4) In-home respite care service providers shall comply with the following:

(a) Establish with the client and caregiver a monthly schedule of days and hours of service for each based on the assessment, plan of care, and agreement with the participant and caregiver;

(b) Provide a copy of the schedule to the caregiver; and

(c) Supervise the client [participant] and program activities as determined by the assessment and plan of care for adult day services.

Section 7. District Responsibilities. A district shall submit to the cabinet a proposal within its area plan to include at least the following:

(1) An assurance of access for adult day services to records of the district pertaining to its contract for delivery of adult day services;

(2) A plan for the delivery of adult day services in the area to be served by the district including identification of services currently provided in the district;

(3) Provide for case management and assistance for adult day services;

(4) A policy and procedure for implementation of case management and assessment services;

(5) A policy and procedure for assuring a client's eligibility in accordance with Section 2 of this administrative regulation;

(6) Assurance of a number of proposed clients for adult day services to be provided;

(7) A cost unit of service to be used as a basis for determining an applicable percentage for the fee schedule as established in Section 4 of this administrative regulation;

(8) A policy and procedure for monitoring a subcontract for delivery of direct adult day services;

(9) Approval of policies and procedures of the service provider required by Section 6(1)(k) of this administrative regulation; and

(10) A policy and procedure assuring that an assessment, as specified in Section 3(2)(a) through (c) of this administrative regulation, shall include the following information submitted electronically to the department in the formats prescribed by the Aging Services Tracking System:

- (a) Demographic information, including family income;
- (b) Physical health;
- (c) Activities of daily living and instrumental activities of daily living;
- (d) Physical environment;
- (e) Mental and emotional status;
- (f) Assistive devices, sensory impairment, and communication abilities;
- (g) Formal and informal resources; and
- (h) Summary and judgment.

Section 8. Facility Requirements. An adult day care and Alzheimer's respite program provider operating a facility for service shall:

[plan of care. Section 6. Facility Requirements. Adult day care and Alzheimer's respite program providers operating facilities for services shall:] (1) Comply with requirements outlined in 902 KAR 20:066 for a licensed adult day health center, if offering adult day health services;

(2) Locate the adult day-care center in a geographic area that provides convenient access to a majority of older persons;

(3) Locate, design, and furnish the adult day-care center to be readily accessible to and usable by individuals with disabilities [assure access and to accommodate the special needs of older persons, including individuals with handicaps];

(4) Provide sufficient space and arrangements of furnishings to allow for:

- (a) Adequate client movement;
- (b) Program activities;
- (c) Food service; and
- (d) Socialization;
- (5) Provide sufficient private office space to permit individual counseling and confidential maintenance of records;
- (6) Provide appropriate lighting, heating, cooling and ventilation for client [participant] comfort and program activities;
- (7) Provide covered leak proof garbage disposal units for the kitchen;

(8) [(7)] Equip each adult day-care center with bathroom facilities meeting the following requirements:

- (a) A minimum of one (1) toilet for each ten (10) clients [participants] with equal number of wash basins;
- (b) Readily accessible and usable by individuals with disabilities [Easy accessibility to the handicapped];
- (c) In men's bathrooms urinals may be substituted for up to one-half (1/2) the number of toilets required, and
- (d) Bathroom facilities that shall

1. a. Be cleaned and sanitized daily or more often, if needed, and

b. Documented by a cleaning log located in the bathroom; and

2. Contain

a. Hot and cold running water.

b. Mirror;

c. Soap and towels or electric hand dryers; and

d. Leak proof garbage disposal units emptied and cleaned daily;

(9) [Cleaned and sanitized daily; and

(e) Hot and cold running water, mirror, soap and towels;

(8) Comply with applicable local housing and health codes;

(10) Comply with zoning requirements;

(11) [(9)] Obtain initial and annual inspection by state or local fire safety officials and comply with requirements;

(12) [(40)] Maintain at least one (1) fully operational fire extinguisher with initial and annually updated inspection tags;

(13) [(44)] Maintain a fully equipped first aid kit, with unexpired contents, as recommended [defined] by the American Red Cross;

(14) [(42)] Provide identifiable space during hours of operation, for a client [participants] in need of a more private environment or rest area; and

(15) [(43)] Provide separate identifiable space during operational hours, if co-located in a facility housing other services.

2. The following space may be shared.

a. Dining room;

b. Kitchen; and

c. Therapy room [Certain space may be shared, like the dining room, kitchen and therapy rooms].

Section 9. [7-] Program Staff. (1) Staffing requirements for a certified adult day-care center [in-center programs] shall include:

(a) Trained and experienced staff that shall be present each day of operation;

(b) At least two (2) staff members at the adult day-care center at times when there is more than one (1) client in attendance, one (1) of whom shall be a paid staff member;

(c) Staffing ratios that shall be:

1. One (1) staff member if one (1) client is in attendance;

2. Two (2) staff members if two (2) clients are in attendance;

3. Three (3) staff members if eleven (11) clients are in attendance; and

4. One (1) staff member for each five (5) additional clients over eleven (11);

(d) Except for a director, volunteer personnel may be included in the staff ratio, if volunteer personnel meets staff qualifications and training requirements of this administrative regulation, and

(e) At least one (1) staff member who has completed cardiopulmonary resuscitation certification by the American Heart Association or American Red Cross present when clients are in attendance.

(f) A criminal records check that shall be obtained on a potential employee prior to the employee's date of hire in accordance with KRS 216.787.

[(b) Staffing ratios that shall be one (1) staff for each five (5) participants;

(c) There shall be at least two (2) responsible persons at the center at times when there are more than one (1) participant in attendance; one of whom shall be a paid staff member;

(d) Volunteers may be included in the staff ratio if they meet staff qualifications and training requirements;

(e) At least one (1) staff member who has completed first training shall be present at times that participants are in attendance.]

(2) Staff qualifications for programs shall be as follows:

(a) A director of an adult day-care center [Directors of centers] shall meet one (1) of the following requirements:

1. A trained social worker possessing:

a. A minimum of a bachelor's degree in social work or a related field relevant to geriatrics and [and

b.] two (2) years professional experience in working with the elderly; or

b. [e-] A master's degree in social work or a related field relevant to geriatrics and [and

d-] six (6) months professional experience working directly with the elderly; [or]

2. A registered or practical nurse licensed in Kentucky with two (2) years professional experience working directly with the elderly while an employee of a:

a. Home health agency;

b. Long-term care facility;

c. Public health agency; or

d. Social service agency;

3. An individual at least twenty-one (21) years of age with:

a. A high school diploma or GED certificate; and

b. A minimum of two (2) years of college or equivalent training with at least two (2) years of professional experience in working directly with the elderly; or Two years professional education in social services, health or geriatrics; and

c. Two years professional education in working directly with the elderly.]

4. Professional experience that shall:

a. [shall] Substitute for professional education on a year-for-year basis; and

b. [and shall] Include working directly with the elderly while an employee of a public or private health or social service agency.

(b) A case manager for adult day services shall meet the same qualification requirements specified in subsection (d) of this section.

(c) Administrators of licensed adult day health programs shall meet requirements as governed by 902 KAR 20.066, Operations and services, day health care programs.

(d) [(e)] Staff responsible for assessments or case management for participants shall meet one (1) of the following:

1. A bachelor's degree or master's degree in social work, gerontology, psychology, sociology, or a field relevant to geriatrics, no experience required;

2. A bachelor's or master's degree in nursing with a current Kentucky nursing license, no experience required;

3. A bachelor's degree with two (2) years experience in working with the elderly; or

4. A Kentucky registered nurse with a current Kentucky license and two (2) years experience or licensed practical nurse with a current Kentucky license and three (3) years experience working with the elderly; and

5. Volunteer experience working with the elderly shall be counted on an hour-for-hour basis.

(e)1. Staff or volunteer personnel [(d) Employees and volunteers] with ongoing client contact shall submit evidence of tuberculosis testing, which shall be maintained in the personnel file, as governed by 902 KAR 20.200 [;

4-] within one (1) year prior to employment[;] or

[2-] during the first week of employment.

2. An annual screening shall be required thereafter.

(f) Staff or volunteer personnel [and

3- Annually thereafter.

(e) An employee or volunteer contracting an infectious disease pursuant to 902 KAR 2.020 shall;

1. Not appear at work until the infectious disease can no longer be transmitted; and

2. Provide a physician's statement for return to work.

(g) [(f)] In-home respite staff shall meet the [above] requirements of paragraphs (a) through (f) of this subsection and shall:

1. Be twenty-one (21) years of age if working independently; or

2. If working as a team to provide direct services, have one (1) member [shall be] at least twenty-one (21) years of age and the other staff member [shall be] at least eighteen (18) years of age.

(3) Training of staff shall be provided by an appropriate qualified professional [professionals] as follows:

(a) Prior to assuming duties, paid and volunteer personnel shall receive a minimum of six (6) hours of orientation to the program and adult day-care center including:

1. Program objectives;

2. Program policies and procedures;

3. Health, sanitation, emergency, and safety codes and procedures;

4. Client confidentiality; [and]

5. Personnel policies and procedures; and

6. Policies and procedures that shall be explained verbally and provided in writing;

(b) Within one (1) month of employment all staff shall be trained and certified in cardiopulmonary resuscitation.

(c) Within three (3) months of employment, staff [personnel] shall be provided a minimum of thirty-four (34) hours of basic train-



ing that includes:

1. The aging process;
2. Interpersonal communications;
3. Personal care services;
4. First aid;
5. Identifying and reporting health problems; [and]
6. Stress management;
7. Recognizing and reporting suspected adult abuse, neglect, or exploitation consistent with KRS 209.030(2) and (3);
8. Universal blood and body fluid precautions;
9. Dementia;
10. Causes and manifestations of dementia;
11. Managing a client with dementia;
12. Crisis intervention with a combative client; and
13. Effects of dementia on the caregiver.

[(c) In addition to basic training, Alzheimer's respite personnel shall be provided training in:

1. Dementia;
2. Causes and manifestations of dementia;
3. Managing the participant with dementia;
4. Crisis intervention with combative participants; and
5. Effects of dementia on the caregiver.

(d) A minimum of eight (8) hours of annual training to review and update knowledge and skills shall be provided.

(e) If in-home respite care is provided in teams, at least one (1) member shall have orientation and basic training and the other member shall be provided:

1. Orientation within two (2) weeks of employment; and
2. Basic training within three (3) months of employment.

Section 10. Client Records. (1)(a) A client record shall [– Section 9. Participant Records.

(1)(a) Records shall be typed or legibly written in ink with each entry dated and signed by the recorder and [shall] include the recorder's title.

(b) Each client [participant] record shall be maintained at the program site and [shall] contain:

1. A completed assessment;
2. Client notification by letter;
3. A weekly summary of any changes in the client's:

- a. Objectives and goals;
- b. Progress;
- c. Physical and mental conditions;
- d. Behaviors;
- e. Responses;
- f. Attitudes;
- g. Appetite; or
- h. Other changes or observations noted by program staff and case manager;

4. Emergency contact information including responsible party and personal physician;

5. Attendance record;

6. Record of services provided by in-home or other program services;

7. Signed authorization for client to receive emergency medical care, if necessary;

8. Ongoing reassessment and plan of care;

9. Signed and dated in medical summary and care plan, if referred on orders of a physician;

10. Correspondence; and

11. Closing summary. (a) Signed and dated in medical summary and care plan, if referred on orders of a physician;

- (b) A completed assessment;
- (c) Signed eligibility statements;
- (d) Application for services;
- (e) Client notification;
- (f) Fee assessment;
- (g) An individualized plan of care including specific activities and objectives and signed DSS 1253, Quality Assurance Agreement, as incorporated by reference into 910-KAR 1:190, prepared by the center director and case manager with the input and agreement of the participant and primary caregiver;
- (h) An ongoing record, indicating any changes in the participant's:

1. Objectives and goals;
2. Progress;
3. Physical and mental conditions;
4. Behaviors;
5. Responses;
6. Attitudes;
7. Appetite; or
8. Other changes or observations noted by program staff and case manager;
- (i) Emergency contact information including responsible party and personal physician;
- (j) Attendance record;
- (k) Record of services provided by in-home or other program services;
- (l) Signed authorization for participant to receive emergency medical care, if necessary;
- (m) Ongoing reassessments and care plans;
- (n) Correspondence; and
- (o) Closing summary.
- (2) Licensed day care centers shall maintain records as governed by 902 KAR 20:066.
- (3) The service provider shall comply with reporting requirements of the district and the cabinet.
- (4) Confidentiality of records and reports shall be in accordance with KRS 194A.060(2).

Section 11. Certification of Adult Day-Care Centers. (1) An adult day-care center shall be certified by the cabinet.

(2) An authorized representative of the department shall have the authority to inspect premises and records required by this administrative regulation and may request assistance from the local health department upon receipt of a complaint.

(3) Application for certification shall be made by filing a DAIL-ADC-900 Application for Adult Day-Care Center Certification with the Cabinet for Health and Family Services, Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(4)(a) Renewal of certification shall be made biennially.

(b) A renewal application shall be submitted prior to the expiration date of the current certification.

(5)(a) Compliance with the health, safety, and treatment standards established in this administrative regulation shall be documented on a DAIL-ADC-901 Certification Check List.

(b) Documented compliance shall be confirmed by:

1. An unannounced inspection pursuant to KRS 205.955; and
2. The department.

(6)(a) Regulatory violations identified during an inspection shall be transmitted in writing to the adult day-care center within ten (10) business days of the inspection.

(b) The adult day-care center shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within fifteen (15) business days of receiving the department's plan for compliance.

1. The plan shall specify the dates by which each of the violations shall be corrected.

2. Following a review of the plan, the adult day-care center shall:

- a. Be notified in writing of the acceptability of the plan within fifteen (15) business days of receipt of the plan for compliance; and
- b. Receive a certificate certifying the adult day-care center for a two (2) year period.

3 a. If the plan is unacceptable, the reasons shall be specified.

b. The adult day-care center shall modify or amend the plan for compliance and resubmit within fifteen (15) business days.

c. If the plan for compliance is satisfactory, the adult day-care center shall be notified as specified in subparagraph 2 of this paragraph.

(7) If the department determines after reviewing the amended plan of compliance that certification shall be denied, the department shall notify the adult day-care center within ten (10) business days of the determination and with the:

(a) Opportunity to an informal dispute resolution meeting:

1. Between the:
- a. Department; and

- b. A representative of the adult day-care center;  
2. To be held within fifteen (15) days of the adult day-care center's receipt of the notice; and  
3 To address an issue of noncompliance in question, including the provision of additional documentation or support materials; and  
(b) Appeal rights as specified in Section 12 of this administrative regulation if:  
1. An informal dispute is not requested; or  
2. A dispute is not resolved with the informal dispute resolution.  
(8)(a) The commissioner of the department may deny or revoke certification if the health, safety, or security of a client is in danger or for failure to meet the standards of this administrative regulation after the expiration of a period not to exceed sixty (60) days from the date of the first official notice that standards have not been met.  
(b) If certification is revoked, the applicant shall not reapply for at least one (1) year from the designated date of closure established by the cabinet.

Section 12. Appeal Procedures. (1) If certification of an adult day-care center has been denied or revoked, the applicant shall be notified in writing of the right to appeal.

- (a) Within ten (10) days of determination; and  
(b) By certified mail.  
(2) To request an administrative hearing, an applicant shall send a written request to the department within thirty (30) days, pursuant to KRS 205.950, after receipt of the notice.  
(3) The denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.  
(5)(a) If the denial or revocation is upheld by the secretary, the commissioner of the department or representative shall specify the date by which the adult day-care center shall close.  
(b) The center shall be notified in writing.  
(6) An adult day-care center may appeal a final decision to the circuit court within thirty (30) days of the decision.

Section 13. Incorporation by Reference (1) The following material is incorporated by reference:

- (a) "DAIL-ADC-900 Application for Adult Day-Care Center Certification", edition 3/08; and  
(b) "DAIL-ADC-901 Adult Day-Care Certification Checklist", edition 3/08.  
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DEBORAH S. ANDERSON, Commissioner  
 TOM EMBERTON, JR., Secretary

APPROVED BY AGENCY: December 10, 2007

FILED WITH LRC: December 12, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2008, at 9 a.m. in the Cabinet for Health and Family Services Health Services Board Room, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

Contact Person: Shirley Eldridge 564-6930, ext 3432

- (1) Provide a brief summary of:  
 (a) What this administrative regulation does: This administrative regulation establishes the adult day and Alzheimer's respite program.  
 (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish health, safety, and treatment requirements and to certify adult day-care centers in accordance with KRS 205.950.  
 (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes health, safety, and treatment standards for a certified adult day-care center.  
 (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the standards of operation for a certified adult day-care center.  
 (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:  
 (a) How the amendment will change this existing administrative regulation. The amendment updates adult day and Alzheimer respite services to be consistent with the computation of applicable fees (co-payments) and termination or reduction of services of other programs administered by the department; clarifies provider and district responsibilities; clarifies facility requirements, staffing qualifications, and includes specific hours of training for staff. The amendment also adds the certification requirements and appeal procedures of 910 KAR 1.230 because it is being repealed with 910 KAR 1.231.  
 (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to be consistent with other programs by the department, and to revise the fee schedule (copayment) in accordance with federal poverty guidelines. The amendment to provider and district responsibilities, facility requirements, staffing qualifications, and training for staff increases better understanding and operation of the program.  
 (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms by clarifying facility requirements, staffing requirements, staffing qualifications, and staff hours of training therefore establishing health, safety, and treatment for the adult day and Alzheimer's respite client in accordance with KRS 205.950.  
 (d) How the amendment will assist in the effective administration of the statutes: The same as for question (c).  
 (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 22 adult day-care centers in Kentucky-1,231 clients being served, 82 Alzheimer's respite in-home, and 599 Alzheimer's in-center; and 15 districts that contract with the Department for Aging and Independent Living to carry out these services.  
 (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:  
 (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The 15 districts will have to reassess for client fees (copayments). The adult day-care centers will have to have written policies and procedures for administration of the program. Paid and volunteer personnel prior to assuming duties will need to receive a minimum of 6 hours of orientation to the program and center, and within 3 months of employment have a minimum of 34 hours of basic training.  
 (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs to the program. The amendment will reduce the co-payment for low income clients.  
 (c) As a result of compliance, what benefits will accrue to the entities identified in question (3) Better understanding for program operation and less costs to low income clients.  
 (5) Provide an estimate of how much it will cost the adminis-

trative body to implement this administrative regulation:

- (a) Initially: No additional costs.
- (b) On a continuing basis: No additional cost.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. State general funds and federal Title III AOA funds.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Revises current fee schedule/co-payment. The fees of this administrative regulation are co-payments for services if a client is eligible to pay in accordance with KRS 205.203(2).
- (9) TIERING: Is tiering applied? Tiering was not applied. Implementation of policy is the same statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 3001
2. State compliance standards. KRS 194A.050(1), 205.204(2), 205.950
3. Minimum or uniform standards contained in the federal mandate. None
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
  2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Aging and Independent Living and fifteen (15) Area Agencies on Aging will be impacted.
  3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.950(1)
  4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
    - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no revenue generated for the state or local government for the first year.
    - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated for the state or local government for subsequent years.
    - (c) How much will it cost to administer this program for the first year? No additional costs.
    - (d) How much will it cost to administer this program for subsequent years? No additional costs.
- Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
- Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Support (Amendment)

#### 921 KAR 1:380. Child Support Program application and Interstate process.

RELATES TO KRS 205.705, 205.710-205.800, 205.992, 213.046(4), 405.430(5), 405.520, 406.021, 406.025, 407.5101-407.5902, 610.170, 45 C.F.R. 302.30, 302.31, 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3-303.15, 303.30-303.31, 303.70, 42 U.S.C. 651-654, 657, 663, 666

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 (1), 205.795 and 405.520 authorize the secretary to promulgate administrative regulations to operate the Child Support Program (CSP) in accordance with federal law and regulations. 45 C.F.R. 303.2 requires access to the child support application process to be provided to the public. This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available, and the process for an interstate case.

Section 1. Child Support Case Types. (1) Kentucky Transitional Assistance Program (K-TAP) or Kinship Care.

(a) 1. An applicant for, or recipient of, K-TAP or Kinship Care shall make an assignment of rights ~~[pursuant to 921 KAR 3:030]~~ to the state for support that the applicant or recipient may have from any other person in accordance with:

a. KRS 205.720(1); and

b. 921 KAR 2.006.

2. The assignment shall

a. ~~1-~~ Include members of the case for whom support rights apply; and

b. ~~2-~~ Be completed at the time of application for K-TAP or Kinship Care benefits using the application form specified in 921 KAR 3.030.

(b) An applicant or recipient shall cooperate in all phases of child support activity that shall, if known, include:

1. The name of the noncustodial parent or obligor;

2. The Social Security number of the noncustodial parent or obligor;

3. Information to assist in the

a. Location of the noncustodial parent or obligor;

b. Enforcement of a child support order; or

c. Review or modification of a child support order;

4. Establishment of:

a. Paternity, if paternity has not been [be] established; and

b. An assigned support obligation;

5. ~~6-~~ Enforcement of.

a. An assigned support obligation; and

b. A spousal support order if the cabinet is collecting for a child who resides with the spouse or former spouse; and

6. ~~7-~~ Forwarding any child support payment received to the cabinet's centralized collection unit.

(2) Foster Care.

(a) The CSP shall collect and disburse child support on behalf of a child for whom:

1. The state is making a foster care maintenance payment as required by 42 U.S.C. 657 and an assignment of rights has been made; or

2. The cabinet has custody, and there is an order for the child's parent or parents to pay child support to the cabinet pursuant to KRS 610.170.

(b) The child's benefit worker with responsibility for the foster care child shall.

1. Cooperate with the CSP;

2. Review and approve a foster care child support referral ~~[using the "DCBS-1260, Title IV-E and Child Support Referral"]~~;

3. ~~[Forward the DCBS-1260 to the appropriate child support staff,~~

4.] Complete a change of status if a change occurs that relates

to the [child's] child support process, and

4.[6.] Forward to the CSP a copy of the child support court documents [pertaining to the child's child support process].

(c)1. If a child with special needs is adopted in accordance with 922 KAR 1:100 and reenters the custody of the cabinet, the cabinet:

- a. May determine good cause in accordance with Section 2(3) of this administrative regulation; or
- b. Shall establish a child support obligation pursuant to subparagraph 2 of this paragraph.

2. The cabinet shall [may] pursue the establishment of a child support obligation if:

- a. A child with special needs adopted in accordance with 922 KAR 1:100 has reentered the custody of the cabinet due to the child's maltreatment or abandonment; and
- b. The commissioner or designee recommends the establishment of child support.

(3) Medicaid only.

(a) If a Medicaid-only referral is made [pursuant to 921 KAR 3-030], the CSP shall obtain the following information, if available:

1. Medicaid case number;
2. Name of the noncustodial parent or obligor;
3. Social Security number of the noncustodial parent or obligor;
4. Name and Social Security number of the child;
5. Home address of the noncustodial parent or obligor; and
6. Name and address of the noncustodial parent or obligor's place of employment.

(b) An application for Medicaid shall include an assignment of rights for medical support:

1. Pursuant to 907 KAR 1:011; and
2. Which shall be completed by using the application form specified in 921 KAR 3.030

(c) Except for a custodial parent who is pregnant or in her postpartum period, pursuant to 907 KAR 1:011, a custodial parent shall cooperate in all phases of medical support activity

(d) A Medicaid-only recipient desiring full child support services, in addition to the medical support services, shall complete and submit to the CSP the [?]CS-140, Assignment of Rights and Authorization to Collect Support[?].

(4) Nonpublic Assistance.

(a) In accordance with KRS 205.721, the CSP shall make child support services available to any individual who:

1. Assigns rights for medical support only;
2. Applies for services pursuant to paragraph (c) of this subsection; or
3. Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance.

(b) The CSP shall notify the family no longer eligible for public assistance, within five (5) working days, that child support services shall continue unless the CSP is notified to the contrary by the family.

(c) Application Process for a Nonpublic Assistance Individual.

1. Upon the request of a nonpublic assistance applicant, the CSP shall give an application packet to the applicant. If the request is:

- a. Made in person, the packet shall be provided the same day, or
- b. Not made in person, the packet shall be sent to the applicant within five (5) working days of the request.

2. The application packet shall include the:

- a. [?]CS-33, Non-K-TAP Application[?];
- b. [?]CS-168, Application for Direct Deposit[?]; and
- c. [?]CS-11, Authorization and Acknowledgement of No Legal Representation[?].

3. In order to receive child support services, the applicant shall complete and return the:

- a. CS-33; and
- b. CS-11.

(d) Except for a putative father and location-only case, services provided to a nonpublic assistance client through the CSP shall be those services listed in Section 2 of this administrative regulation.

(e) If a case involves a putative father, services provided shall be those identified in Section 2(1)(b) and (c) of this administrative regulation.

(f) The CSP shall obtain the following information from a non-public assistance applicant, if available:

1. Name, date of birth, and social security number of the child;
2. Name of the custodial and noncustodial parent, or obligor;
3. Social Security number of the custodial and noncustodial parent, or obligor;
4. Date of birth of the custodial and noncustodial parent, or obligor;
5. Home address or last known address of the custodial and noncustodial parent, or obligor; and
6. Name and address of the custodial and noncustodial parent's, or obligor's, employer or last known employer.

Section 2. General Services and Good Cause for All Case Types. (1) The CSP shall provide child support services for a case type described in this administrative regulation in accordance with 42 U.S.C. 654. The services shall include:

- (a) Location of the noncustodial parent, or obligor;
- (b) Location of the custodial parent for establishment of paternity;
- (c) Establishment of paternity based upon the receipt of either:
  1. A court order; or
  2. An affidavit from the Office of Vital Statistics that a signed, notarized voluntary acknowledgement of paternity has been registered;
- (d) Establishment of a child support or medical support obligation;

(e) Enforcement of a:

1. Child support or medical support obligation, and
2. Spousal support obligation if the:
  - a. Client is the spouse or ex-spouse;
  - b. Child lives with the spouse or ex-spouse; and
  - c. Cabinet is collecting support on behalf of the child;
- (f) Review and modification of an assigned support obligation in accordance with 921 KAR 1:400;

(g) Collection and disbursement of current and past-due support payments resulting from an assigned support obligation, and

(h) For a Medicaid-only case type, application for health insurance coverage through an employer for the child if court or administratively ordered but not provided by either parent.

(2) The CSP shall open a case and determine needed action and services within twenty (20) calendar days of receipt of a:

- (a) [A] referral from the public assistance agency;
- (b) Foster care referral[?]-DCBS-4260; or
- (c) [A] nonpublic assistance application in accordance with Section 1(4)(c) of this administrative regulation.

(3) Good cause.

(a)1. If an applicant or client states that good cause for noncooperation exists, the applicant or client shall have the opportunity to establish a claim pursuant to 921 KAR 2.006.

2. Evidence for determination of good cause shall be pursuant to 921 KAR 2.006.

3. For a foster care child, good cause for nonenforcement of child support shall be determined to exist if evidence and criteria are met pursuant to:

- a. 921 KAR 2:006; or
- b. 922 KAR 1:530.

(b) If the CSP has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1), the CSP shall not attempt location, establishment, modification, or enforcement of an assigned support obligation.

Section 3. Parent Locator Service and Associated Fee for Service (1) Unless the cabinet has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1) or 921 KAR 2:006, location shall be attempted for a:

- (a) Public assistance case referred to the CSP; or
- (b) Nonpublic assistance case for which child support services are being provided.

(2) The CSP shall attempt to locate a noncustodial parent or obligor and the noncustodial parent's, or obligor's, sources of income, assets, property and debt, if necessary, for a public assistance case or nonpublic assistance case assigned to the CSP pursuant to:

- (a) KRS 205.712 and 205.730(5); and
- (b) 45 C.F.R. 303.69 or 303.70.
- (3) In accordance with KRS 205.730(4), location services shall be provided in a parental kidnapping case.
- (4) The CSP shall provide location services to a putative father in accordance with KRS 205.730(2) and (4).
- ~~[(5) In accordance with 45 C.F.R. 303.70(e), the CSP shall charge a one (1) dollar application fee for a-~~
- ~~(a) Nonpublic assistance case in which location is the only service requested; or~~
- ~~(b) Parental kidnapping request, but absorb the cost of the application fee.]~~

Section 4. Interstate Process for Child Support Services. In accordance with KRS 205.712, 407.5101-407.5902, and 45 C.F.R. 303.70, the CSP shall:

- (1) Extend to an interstate child support case the same services available to an intrastate case; and
- (2) Provide an agency in a responding state sufficient and accurate information and documentation on the appropriate interstate transmittal forms, the:
  - (a) ["CS-98, General Testimony"]; and
  - (b) ["CS-99, Affidavit in Support of Establishing Paternity"], and
  - (c) ["CS-100, Uniform Support Petition"].

Section 5. Public Awareness. The CSP shall publicize the availability of its services and encourage their use pursuant to KRS 205.712(2)(g). This effort may include:

- (1) Public service announcements;
- (2) Posters;
- (3) Press releases;
- (4) Videos;
- (5) Annual reports;
- (6) Newsletters;
- (7) Mail inserts;
- (8) Pamphlets; and
- (9) Letters.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "CS-11, Authorization and Acknowledgement of No Legal Representation", edition 3/08 [4/06];
- (b) "CS-33, Non-KTAP Application", edition 3/08 [4/06];
- (c) "CS-98, General Testimony", edition 10/06;
- (d) "CS-99, Affidavit in Support of Establishing Paternity", edition 10/06;
- (e) "CS-100, Uniform Support Petition", edition 10/06;
- (f) "CS-140, Assignment of Rights and Authorization to Collect Support", edition 10/06; and
- (g) "CS-168, Application for Direct Deposit", edition 3/08 [4/06]; and
- (h) "DCBS-1260, Title IV-E and Child Support Referral", edition 10/06.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK A. WASHINGTON, Commissioner  
TOM EMBERTON, JR., Acting Secretary  
APPROVED BY AGENCY: December 10, 2007  
FILED WITH LRC: December 13, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008 at 9 a.m. in the Health Services Board Room, on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of

the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Deannger, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available, and the process for an interstate case.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for child support application services and interstate process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050(1), 205.795, 405.520, and by virtue of applying for federal funds under 42 U.S.C. 651-654, 657, 663, and 666, to specify the process by which an individual may apply for child support services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures used by the cabinet for application service provision and interstate process for child support.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this administrative regulation: The amendment removes wording regarding a \$1 application fee for child support services, as the cabinet absorbs this fee for all applicants. References to the DCBS-1260 were removed. A reference to a federal regulation was added, and incorrect references were revised. The following incorporated forms were updated: "CS-11, Authorization and Acknowledgment of No Legal Representation," to add language to clarify the consequences of sharing confidential information; "CS-33, Non-K-TAP Application," to add a policy holder insurance segment; and "CS-168, Application for Direct Deposit," to add a phone number blank. Additional corrections and formatting changes were made in order to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to incorporate corrections and to update state forms used in accordance with KRS Chapter 407 and 405. The amendment will provide revisions to the incorporated forms that will improve child support policy and procedures and make corrections to the regulation in order to comply with existing policy and system processes. The amendment will also reduce the potential of financial penalties for non-compliance with federal requirements and reduce the possibility of additional expenses for providing required services.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by specifying the process by which an individual may apply for child support services, the scope of services available, and the process for an interstate case.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes through its updates to state forms incorporated by reference into this regulation and necessary technical corrections to ensure clarity and compliance with KRS Chapter 13A requirements.

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: The cabinet carries approximately 334,663 child support cases, which will be subject to provisions contained within this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new actions to take from the regulated entities in order to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There will be no new costs for regulated entities due to this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The entities identified in question (3) will have the benefit of using correct forms and forms that are clearer as a result of compliance with this amendment. The regulated entities will also benefit from greater clarity provided in the amendment regarding the roles, functions, and services of the cabinet.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional funding is required

(b) On a continuing basis: No additional funding is required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include State General Funds and federal funds under Title IV-D of the Social Security Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There are no fees and no increase in funding for this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering has not been applied, as this administrative regulation will be applied in a like manner on a statewide basis.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 651-654, 654, 657, 663, 666.

2. State compliance standards. KRS 194A.050(1), 205795, 405.520.

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None imposed.

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Support (Amendment)

921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.

RELATES TO: KRS [43B-040(2), 205.710-205.800, 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, [405.450], 405.991, 406.021, 406.025, 454.220, 45 C.F.R. 302.50, 302.56, 303.4, 303.8, 303.31, 42 U.S.C. 651-669b]

STATUTORY AUTHORITY: KRS [43B-470] 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 43B-470 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 43B-194A.050(1) requires the secretary of the cabinet to promul-

gate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.795 and 405.520 authorize the secretary of the cabinet to promulgate and adopt administrative regulations to operate the Child Support Program in accordance with federal law and regulations. This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

Section 1. Support Obligation shall be Established. (1) A child support and medical support obligation shall be established by:

(a) A court of competent jurisdiction; or

(b) An administrative order.

(2) The obligation shall be the amount:

(a) Specified in Section 2(4) of this administrative regulation; or

(b) Administratively established by the cabinet in accordance with the child support guidelines contained in KRS 403.212, as computed on form:

1. [Form, -]CS-71, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation[-]; or

2. [Form, -]CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception[-].

(3) The amount determined shall be for collection purposes. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For a public assistance case and a nonpublic assistance case for which child support services are being provided, the cabinet shall use state statute and legal process in establishing the amount of a child support and medical support obligation, including KRS 405.430 and 454.220.

(5) In addition to the deductions as specified in KRS 403.212(2), the deduction for a prior-born child residing with a parent for an administratively or judicially imputed child support obligation, as specified in KRS 403.212(2)(g)3, shall be calculated by using [determined by applying].

(a) That parent's portion of the total support obligation as indicated on the worksheet, if:

1. There is a support order; and

2. A copy of the child support obligation worksheet is obtained,

or

(b) One-hundred (100) percent of the income of the parent with whom the prior born child resides, if:

1. There is no support order;

2. There is a support order, but no support obligation worksheet; or

3. A worksheet cannot be obtained,[-] or

(b) That parent's portion of the total support obligation as indicated on the worksheet, if:

1. There is a support order; and

2. A copy of the child support obligation worksheet can be obtained.]

(6) In accordance with 45 C.F.R. 303.4(d), within ninety (90) calendar days of locating a noncustodial parent, or obligor, the cabinet shall:

(a) Complete service of process; or

(b) Document an unsuccessful attempt to serve process.

(7) If service of process has been completed, the cabinet shall, if necessary:

(a) Establish paternity;

(b) Establish a child support or medical support obligation, or

(c) Send a copy of a legal proceeding to the obligor and obligee within fourteen (14) calendar days of issuance.

(8) If a court or administrative authority dismisses a petition for support without prejudice, the cabinet shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support obligation or medical support obligation, or both if:

(a) Paternity is not in question,

(b) There is no existing order of support for the child,

(c) The noncustodial parent, or obligor, resides or is employed



in Kentucky; and

(d) The noncustodial parent's, or obligor's, address is known.

(2) The cabinet shall determine the monthly support obligation in accordance with the child support guidelines as contained in KRS 403.212, or subsection (4) of this section.

(3) To gather necessary information for administrative establishment, the cabinet shall:

(a) Send to the custodial parent, forms:

1. [?]CS-133, Custodial Parent Information Request[?];
2. [?]CS-65, Statement of Income and Resources[?];
3. [?]CS-132, Child Care Expense Verification[?]; and
4. [?]CS-136, Health Insurance Information Request[?].

(b) Send to the nonparental custodian, forms:

1. [?]CS-131, Nonparental Custodian Information Request[?];
2. CS-132; and
3. CS-136, [?"Health Insurance Information Request,"] if appropriate;

(c) Send to the noncustodial parent, or obligor, forms:

1. [?]CS-64, Noncustodial Parent Appointment Letter[?];
2. CS-65;
3. CS-132; and
4. CS-136;

(d) Send a [?]CS-130, Wage Information Request[?] to the employer of the:

1. Custodial parent[, or nonparental custodian]; or
2. Noncustodial parent, or obligor;

(e) Issue a subpoena, if appropriate, as specified in KRS 205.712(2)(k), (l), (n), by submitting a [?]CS-84, Administrative Subpoena[?] to:

1. A utility and cable company;
2. A financial institution;
3. A custodial parent;
4. A nonparental custodian;
5. A noncustodial parent, or obligor; or
6. An employer; and

(f) Prior to initiating a request for information from a certified consumer credit reporting agency as specified in KRS 205.7685, send an obligor a [?] if appropriate. An obligor may contest a mistake of fact up to ten (10) days after receiving a [?] CS-93, Advance Notice of Intent to Request Full Credit Report[?].

(4) In a default case, the cabinet shall set the obligation based on the Kentucky Transitional Assistance Program (K-TAP)[K-TAP] standard of need for a child as specified in 921 KAR 2:006, Section 8(2)(a).

(5) After the monthly support obligation is determined, the cabinet shall:

(a) Serve a [?]CS-66, Administrative Order/Notice of Monthly Support Obligation[?] and a [?]CS-80, Rights and Responsibilities of Noncustodial Parents[?], upon the noncustodial parent, or obligor, as specified in KRS 405.440; and

(b) Provide the legal representative of the noncustodial parent, or obligor, [another concerned party] with a copy of the notice within fourteen (14) calendar days of the noncustodial parent's, or obligor's, refusal or acceptance of the notice; and

(c) Send a CS-66 to the custodial parent, concurrent with issuing the CS-66 to the noncustodial parent or obligor.

(6) In accordance with KRS 405.430(6), g[the] cabinet may modify the monthly support obligation established by the cabinet.

(7) The cabinet shall not administratively modify an obligation that is established by a court of competent jurisdiction, except as provided in subsection (8) of this section.

(8) If support rights are assigned to the cabinet, the cabinet shall direct the obligor to pay to the appropriate entity by modifying the order:

(a) Administratively upon notice to the obligor or obligee; or

(b) Judicially through a court of competent jurisdiction [If support rights are assigned to the cabinet, the cabinet may upon notice to the obligor and obligee, administratively modify an order established by a court of competent jurisdiction to direct the obligor or other payor to change the payee to the appropriate entity].

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) In accordance with KRS 405.430(6), the cabinet shall notify each party subject to a child support order of

the right to request a review of the order every thirty-six (36) months.

(2) In accordance with 45 C.F.R. 303.8(e), within 180 days of receiving a request for review or of locating the nonrequesting parent, whichever occurs later, the cabinet shall:

(a) Conduct the review;

(b) 1. Modify the order;

2. Request modification of the order; or

3. Determine the circumstances do not meet criteria for modification, in accordance with KRS 403.213, and issue a CS-79, Notification of Review Determination, as specified in paragraph (c) of this subsection; and

(c) Provide notification within fourteen (14) calendar days to each parent or custodian, if appropriate, and legal representatives.

(3) Pursuant to 45 C.F.R. 303.8, the cabinet shall conduct a review and, in accordance with subsection (4) of this section, modify a child support order:

(a) Upon the request of:

1. Either parent; or

2. Another party with standing to request a modification; and

(b) Every thirty-six (36) months in a K-TAP case in which the address of each parent or custodian is known.

(4) If a child support case meets the criteria of KRS 403.213, the cabinet shall:

(a) Modify an administratively established order; or

(b) Request a court of competent jurisdiction to modify a judicially-established order.

(5) The cabinet or the cabinet's designee shall seek modification of an administrative or judicial support order to include medical support on behalf of the child.

(6) Retroactive modification of a child support order shall occur in accordance with KRS 403.211(5) and 403.213(1).

Section 4. [The cabinet shall have a written and publicly available review and adjustment plan for a child support order.

(2) The cabinet may review and adjust an administratively established child support obligation or review and request an adjustment to a judicially-established child support obligation:

(a) Upon the request of the cabinet in a public assistance case, or

(b) Upon the request of either parent;]

(3) Retroactive modification of a child support order shall not occur unless:

(a) Within two (2) years of the establishment of the order, evidence of gross income, as defined in the child support guidelines established under KRS 403.212, results in a higher amount of child support; or

(b) There is a pending petition for modification that is effective from the date that notice of the petition is provided to the obligor and obligee.

(4) A public assistance or nonpublic assistance case shall be reviewed administratively or judicially at the request of either parent, nonparental custodian, or another person or entity that may have standing to request a modification subject to the child support order.

(5) Every thirty-six (36) months, the cabinet shall notify each parent subject to an order of the right to request a review.

(6) Within 180 days of receiving a request for review or of locating the nonrequesting parent, whichever occurs later, the cabinet shall:

(a) Conduct the review;

(b) Modify or request modification of the order, or determine that there will be no change and notify the noncustodial parent, or obligor, and another concerned party.

Section 4. Appeal Procedures. (1) A parent, or another person or entity that has standing, or an authorized representative may request and be granted relief by an administrative hearing in accordance with KRS Chapter 13B.

(2) A request shall be made to the cabinet:

(a) In writing;

(b) In person; or

(c) Orally, later reduced to writing within the time frames as specified in subsection (3) of this section.

(3) The written request for an administrative hearing shall be considered timely if made:

(a) Within twenty (20) days of receipt of an initial notice of monthly support obligation;

(b) Within twenty (20) days after the parent is notified that the initial support obligation will be upheld;

(c) Within twenty (20) days of receipt of a notice of lien;

(d) Within thirty (30) days of receipt of a modified notice of monthly support obligation; or

(e) After thirty (30) days but before fifty (50) days have passed since the parent requested an administrative hearing, and the cabinet has not acted upon the request.

(4) If the request is not made within the time period specified in subsection (3) of this section, the parent shall show good cause for the late request. A good cause reason shall include a:

(a) Parent being away from home during the entire filing period;

(b) Parent's inability to read the notice of monthly support obligation; or

(c) Parent's incapacity due to a serious illness during the entire filing period.

(5) A parent or another person or entity having standing to request modification, or an authorized representative may:

(a) Review case material pertinent to the reason for the dispute; and

(b) Present a witness at the hearing.

(6) If the objection is being filed on an initial notice of monthly support obligation, the obligation shall be stayed as specified in KRS 406.450(2).

(7) If the objection is being filed on a proposed modification of an existing administratively established obligation, or a decision that the existing obligation should not be changed, the amount of the existing obligation shall be enforceable and that amount shall be paid by an obligor while the hearing is pending;

(a) If a parent or another person or entity having standing to request a modification, or an authorized representative, prevails, the cabinet shall promptly return to the obligor an overpayment made since the hearing was requested.

(b) If the cabinet prevails, the obligation amount shall be retroactive to the effective date on the notice of monthly support obligation.

(8) A parent or another person or entity having standing to request a modification, or an authorized representative, may withdraw the hearing request by writing to the Child Support Office or the Administrative Hearings Branch in the cabinet.

(9) If a parent or another person or entity having standing to request modification, or an authorized representative, fails to appear at the hearing, the Administrative Hearings Branch may allow the parent to reschedule the hearing.

(a) The parent or another person or entity having standing to request modification, or an authorized representative, shall receive notification by mail that good cause for failing to appear shall be provided within ten (10) days to the Administrative Hearing Officer in the cabinet, or the action shall be dismissed.

(b) If the parent or another person or entity having standing to request modification, or an authorized representative, does not reschedule or show good cause, the hearing officer shall dismiss the action.]

Section 5.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CS-64, Noncustodial Parent Appointment Letter", edition 10/06;

(b) "CS-65, Statement of Income and Resources", edition 10/06;

(c) "CS-66, Administrative Order/Notice of Monthly Support Obligation", edition 03/08[10/06];

(d) "CS-71, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation", edition 10/06;

(e) "CS-71.1, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation Exception", edition 10/06;

(f) "CS-79, Notification of Review Determination", edition 3/08

(g) "CS-80, Rights and Responsibilities of Noncustodial Parents", edition 10/06;

(h)(g) "CS-84, Administrative Subpoena", edition 10/06;

(i)(h) "CS-93, Advance Notice of Intent to Request Full Credit Report", edition 10/06;

(j)(h) "CS-130, Wage Information Request", edition 10/06;

(k)(h) "CS-131, Nonparental Custodian Information Request", edition 10/06;

(l)(h) "CS-132, Child Care Expense Verification", edition 3/08[10/06];

(m)(h) "CS-133, Custodial Parent Information Request", edition 10/06; and

(n)(h) "CS-136, Health Insurance Information Request", edition 3/08 [10/06].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK A. WASHINGTON, Commissioner

TOM EMBERTON JR., Acting Secretary

APPROVED BY AGENCY: December 10, 2007

FILED WITH LRC: December 12, 2007 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008 at 9 a.m. in the Health Services Board Room, on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone: (502) 564-7905, fax: (502)-564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearinger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement requirements for the establishment, review, and modification of child support and medical support orders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A 050(1), 205.795, 405.520 and by virtue of applying for federal funds under 42 U.S.C. 651-669 to establish, review, and modify support obligations. This administrative regulation sets forth such procedures and processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures used by the Cabinet to establish, review, and modify child support and medical support orders.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will change the three (3) year review on public assistance child support cases to become mandatory in accordance with requirements of the Deficit Reduction Act (DRA) of 2005. The amendment updates four (4) child support forms for technical content. Other corrections were made to the administrative regulation to clarify requirements and comply with KRS Chap-

ter 13A. The amendment removes the section pertaining to hearings and appeal procedures from this regulation. A new administrative regulation is being promulgated to specify Kentucky's process for administrative hearings regarding the Child Support Program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to mandate a three (3) year review on public assistance child support cases in accordance with requirements of the Deficit Reduction Act (DRA) of 2005. Adhering to the DRA should decrease the state's potential of incurring financial penalties. Additionally, revisions were necessary for two (2) child support forms in order to comply with state and federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the requirements of KRS 194A.050(1), 205.795, 405.520 and federal requirements of Title IV-D (of the Social Security Act) agencies by clarifying the criteria used by the cabinet in establishing, reviewing, and modifying child support and medical support orders.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures that the Kentucky Child Support Program conforms to and remains compliant with federal and state requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Cabinet carries approximately 334,663 child support cases, which will be subject to provisions contained within the administrative regulation. There are approximately 5034 cases currently meeting the three (3) year criteria for review and possible modification. These cases involve obligors, child custodians, obligor's employers, and administration by state child support staff and contracting officials.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. This amendment will require child support staff to review Temporary Assistance to Needy Families (TANF) related child support cases in a specific timeframe. This mandate will require additional child support staff to complete these more frequent reviews and may require obligors, child custodians, and employers to provide supporting documentation more often.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will increase the amount of administrative actions taken on these TANF related child support cases and therefore increase the administrative cost of the Child Support Program. Approximately fourteen (14) additional state child support staff have been hired to help perform these extra administrative tasks. This amendment will cost the state approximately \$750,000 per year related to employ these additional staff. The cost of these positions will be funded by 100% Federal TANF funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will clarify child support and medical support requirements for child support staff and clients and provide TANF participants the opportunity to have their child support order reviewed, and possibly increased, every three (3) years without having to request a review. By complying with this amendment, child support staff, state officials, and contracting officials, have the potential to increase performance, reduce the risk of non-compliance with federal mandates, and therefore reduce the risk of federal penalties in the TANF grant.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: For the current fiscal year, the amendment to this administrative regulation will cost the Child Support Program approximately \$562,500 for additional administrative staff. The cost of these positions will be funded by 100% Federal TANF dollars. The existing SFY 08 budget has sufficient funds to cover these costs.

(b) On a continuing basis: The amendment to this administrative regulation will cost the Child Support Program approximately \$750,000 annually for additional administrative staff. The cost of these positions will be funded by 100% Federal TANF dollars. The

allotment received for the SFY 08 budget is sufficient to cover these costs at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include State General Funds and federal funds under 42 U.S.C. 401-19, Title IV-A of the Social Security Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no fees and no increase in funding for this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied, as this administrative regulation will be applied in a like manner on a statewide basis

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 302.50, 302.56, 303.4, 303.8, 303.31, 42 U.S.C. 651-669b

2. State compliance standards. KRS 194A.050(1), 205.795, 405.520

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the Federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None imposed.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services, Division of Child Support, Division of Family Support, will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.795, 405.520

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The child support program has been operational for numerous years and does not directly generate any revenue. The amendment to this administrative regulation will not generate any additional revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The child support program has been operational for numerous years and does not directly generate any revenue. The amendment to this administrative regulation will not generate any additional revenue in subsequent years

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is expected to result in significantly increased administrative interaction with affected (TANF) cases. It is projected that the increased workload will require an additional fifteen (15) Full Time Equivalent (FTE) positions within the Child Support system in order to meet Federal mandates and diminish risk of non-compliance and subsequent

Federal penalty to the TANF grant. The cost of these positions will be funded by 100% Federal TANF dollars. DCBS currently has sufficient SFY 08 Federal allotment to cover these costs within the existing budget.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation is expected to result in significantly increased administrative interaction with affected (TANF) cases. It is projected that the increased workload will require an additional fifteen (15) FTE positions within the Child Support system in order to meet Federal mandates and diminish risk of non-compliance and subsequent Federal penalty to the TANF grant. The cost of these positions will be funded by 100% Federal TANF dollars. DCBS currently has sufficient SFY 08 Federal allotment to cover these costs within the existing budget.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Child Support**  
**(Amendment)**

**921 KAR 1:410. Child support collection and enforcement.**

RELATES TO: KRS 13B.010(2), [13B-479] 67A.620, 95.620(1), 95.878, 161.700(1), 186.570(2), 205.595, 205.710-205.800, 237.110(4), 403.215, 405.060(2), (3), 405.405, 405.430-405.510, 407.5101-407.5701, 427.120, 427.125, 45 C.F.R. 302.60, 302.65, 303.6, 303.32, 303.72, 303.100-303.102, 303.104, 15 U.S.C. 1673, 42 U.S.C. 652, 654, 659, 666(a)(1)-(4), (6)-(12), (14)-(17), (19), (b), Pub L. 109-171

STATUTORY AUTHORITY: KRS 15.055(2), 194A.050(1), 205.712(2)(o), 205.712(16), 205.745(9), 205.7685(3), 205.795, 405.411(2), 405.520, 42 U.S.C. 654, 659, 666(a)(1)-(4), (6)-(12), (14)-(17), (19), (b), (e)(1)(G)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 666 requires states to have laws that prescribe procedures to improve effectiveness of child support enforcement. KRS 205.712(2) requires the Cabinet for Health and Family Services to collect and enforce child support obligations and authorizes the cabinet to promulgate administrative regulations to implement its duties. This administrative regulation establishes procedures for collection and enforcement of child support [payments, including means of enforcement and management of disputes and appeals].

Section 1. Collection. (1) Income withholding shall be used for collection of an assigned support obligation or health insurance coverage as defined by 921 KAR 1:001, Section 1(3), (24), and (29).

(2) The cabinet shall notify an employer or other income source of a request for income withholding for an assigned support obligation or health insurance coverage within:

(a) Fifteen (15) calendar days of a request for income withholding with a:

1. "CS-89, Order/Notice to Withhold Income for Child Support"; and

2. "CS-72, National Medical Support Notice"; or

(b) Two (2) working days after entry of an obligor into the State Directory of New Hires [for health insurance with the notice specified in paragraph (a)2 of this subsection].

(3) The employer or other income source shall:

(a) Implement income withholding no later than the first pay period that occurs after fourteen (14) working days following the date the CS-89 is mailed; and

(b) Transfer the CS-72 to the employer's health plan administrator within twenty (20) working days after receipt of the notice.

(4) In accordance with KRS 405.467(4), the cabinet shall send an obligor a CS-164, Notice of Income Withholding, and the CS-89 in order to notify the obligor that the income withholding:

(a) May be contested by requesting an administrative hearing pursuant to 921 KAR 1:430; and

(b) Shall apply to the current and any subsequent employer. [The cabinet shall notify the obligor within fifteen (15) calendar days, in accordance with KRS 405.467(4), of a request for income withholding for an assigned support obligation or health insurance coverage with a CS-89, and "CS-164, Notice of Income Withholding" that:

(a) An obligor may contest the withholding by requesting an administrative hearing as specified in Section 4 of this administrative regulation; and

(b) If the obligor does not contest income withholding for an assigned support obligation or ordered health insurance coverage, as specified in paragraph (a) of this subsection, the income withholding shall apply to the current and any subsequent employer.]

(5) The health plan administrator shall notify the obligor and the cabinet of the health insurance coverage within forty (40) working days of receipt of the.

(6) If an obligor terminates employment, the employer or other income source shall take action pursuant to KRS 405.465(5).

(7) An obligor shall inform the cabinet of any changes in:

1. A current employer or source of income; and

2. Access to health insurance.

(8) If an obligor transfers or assigns income or income-producing property after receipt of notification of a child support obligation, the cabinet shall take action pursuant to KRS 405.060.

(9) If only an arrearage amount is subject to withholding, the arrearage payment and frequency of payment shall be equal to the payment and frequency last designated by judicial or administrative order.

(10) The employer or other income source shall, within seven (7) working days from the date an amount is withheld, forward:

(a) An assigned support obligation payment to the state disbursement unit in the child support agency; or

(b) A medical insurance premium to the health insurance carrier or notify the cabinet prior to payment if more than one (1) option is available under a plan.

(11) The employer or other income source:

(a) Shall include on the transmittal to the cabinet the obligor's:

1. Name,

2. Social Security number; and

3. Cabinet-assigned identification[case] number; and

(b)1. Shall not be required to change payroll frequency but shall withhold at least once monthly; or

2. May combine amounts due the cabinet into one (1) payment, if the amount attributable to each obligor is identified by:

a. Name,

b. Social Security number; and

c. Cabinet-assigned identification number.

(12) Withholding of unemployment compensation.

(a) The cabinet, through an agreement with the Education Cabinet, Office of Employment and Training, shall fax a CS-76, Unemployment Insurance Notice of Withholding, to the Department of Unemployment Insurance within the Education Cabinet to collect a child support payment from an obligor receiving unemployment compensation.

(b) The cabinet shall provide a "[CS-73, Unemployment Insurance Letter]", and "[CS-76, Unemployment Insurance Notice of Withholding]" to notify an obligor [an obligor-notifying] that:

1. Current child support obligation or delinquency is owed;

2. The cabinet has completed a CS-76 to order withholding of:

a. Fifty (50) percent of the unemployment benefit; or

b. The amount of the assigned support obligation, whichever is less; and

3. The obligor may contest the withholding by requesting an administrative hearing as specified in 921 KAR 1:430 [Section 4 of this administrative regulation].

Section 2. Enforcement (1) Federal income tax refund offset

and administrative offset.

(a) A public assistance case shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;
2. An assignment of support to the cabinet;
3. An arrearage of at least \$150 [delinquent], and
4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) A nonpublic assistance case involving past-due child support, a specific dollar amount of medical support, or spousal support shall qualify for offset if the:

1. Cabinet is enforcing a court-ordered or administratively-established support obligation;
2. Cabinet verifies accuracy of the obligor's name and Social Security number;
3. Nonpublic assistance arrearage owed is equal to or greater than \$500, exclusive of fees, court costs, or other non-child support debt; and
4. Cabinet has a copy of the:
  - a. Current support order; and
  - b. Payment record

(c)1 If a case is submitted for federal tax refund offset, the case may be subject to federal administrative offset of nonexempt federal payments pursuant to 42 U.S.C. 664 and 45 C.F.R. 303.7.

2. Nonexempt federal payments shall be denied to individuals owing a child support arrearage as defined in paragraphs (a) and (b) of this subsection.

(2) State income tax refund offset.

(a) A public assistance case for past-due child support, medical support ordered by specific dollar amount, spousal support, K-TAP, Kinship Care, or foster care child support shall qualify for offset if:

1. There is an arrearage on a legally-assigned support obligation;
2. The obligor's name and Social Security number are known;
3. The arrearage is verified as accurate; and
4. The amount of the arrearage is at least \$150

(b) A nonpublic assistance support arrearage shall qualify for offset if the:

1. Case meets the criteria specified in subsection (1)(b)1, 2, and 4 of this section; and
2. Required arrearage amount is not less than \$150.

(3) Tort claim settlements and administrative offset. The cabinet shall:

(a) Identify a child support case for administrative offset, including tort claim settlements, if a child support case meets the criteria specified in subsection (1)(a) or (b) of this section;

(b) Send by mail form [“CS-122, Advance Notice of Intent to Collect Past-Due Support,”] to an obligor notifying that the obligor may contest the accuracy of a past due amount by requesting an administrative hearing as specified in 921 KAR 1:430[Section 4 of this administrative regulation]; and

(c) Notify the Finance and Administration Cabinet to offset administrative payments, including tort claim settlements, in accordance with KRS 205.712(17), for a case identified in paragraph (a) of this subsection.

(4) Financial Institution Data Match (FIDM). The cabinet shall

(a) Use the following criteria to identify a case for seizure of assets:

1. The obligor owes an arrearage equal to at least six (6) months obligation or \$1,000, whichever is less; and
2. The obligor is not complying with the most recent assigned support order;

(b) Issue a "CS-68, Order to Withhold", and "CS-69, Answer to Withhold", to a financial institution holding the obligor's account or accounts;

(c) Issue a CS-68 and [“CS-121, Noncustodial Parent's Answer to Withhold,”] to the obligor by certified mail within two (2) working days:

1. After both of the forms specified in paragraph (b) of this subsection are issued to the financial institution; and

2. Notifying the obligor that the funds in the account with the financial institution may be retained by contesting the order to withhold and requesting an administrative hearing in accordance

with 921 KAR 1:430 [to retain an account with a financial institution an order to withhold may be contested by requesting an administrative hearing as specified in Section 4 of this administrative regulation];

(d) Refer the case for parent-locator service, if a CS-68 is returned and the forwarding address for the obligor is unknown;

(e) Send to the financial institution a "CS-83, Order to Deliver" if:

1. There is no dispute; or
2. The obligor does not take an action specified in paragraph (g) of this subsection;

(f) Send within twenty (20) calendar days of an administrative hearing decision, a:

1. CS-83 to the financial institution, if a case qualifies for the withhold and deliver process; or
2. "CS-70, Release of Order to Withhold" to the financial institution and an obligor, if a case does not qualify for the withhold and deliver process; and

(g) Notify an obligor to retain the funds in the account with the[that to retain an account with a] financial institution, an obligor shall take one (1) of the following actions within twenty (20) calendar [working] days from the date of receipt of a CS-68

1. Pay the total arrearage;
2. Post a bond for the total arrearage; or
3. Sign a [“CS-78, Payment Agreement,”] to pay within fifteen (15) calendar days:

a. Current support;

b. A \$1000 lump sum payment which may be negotiated if the amount:

- (i) Places an unjust burden on the obligor; or
- (ii) Prevents the obligor from obtaining or retaining employment,

c. A negotiated percentage of the remaining arrearage balance which shall be agreed upon by the obligor and the cabinet; and

d. An arrearage payment for subsequent months as determined by one (1) of the following:

- (i) An amount established by a court order;
- (ii) If there is not a court order for arrearage judgment, the payment shall be twenty-five (25) percent of the court-ordered current support obligation; or

(iii) If current support is not owed, the minimum payment shall be equal to the most recent court-ordered support obligation.

(5) If a seizure of assets request is identified, as specified in subsection (4)(a) of this section, and is initiated from outside the commonwealth as a result of a FIDM, pursuant to 42 U.S.C. 666(a)(17)[Financial Institution Data Match], the cabinet shall use the Administrative Enforcement of Interstate Cases process to issue:

(a) A CS-68 and a CS-69 to a financial institution holding the obligor's account or accounts;

(b) A CS-68 and a "CS-121.1, Noncustodial Parent's Answer to Withhold-Limited Enforcement of Interstate Cases", to the obligor by certified mail within two (2) working days after both of the forms specified in paragraph (a) of this subsection are issued to the financial institution, and

(c) To the financial institution a:

1. CS-83 if there is no dispute; or
2. CS-70 if the initiating state's request is withdrawn.

(6) Lump sum payment.

(a) In accordance with KRS 405.465(6), an employer shall provide written notification to the Department for Community Based Services, Division of Child Support, of any lump sum payment that is not already subject to the employee's assigned support obligation and wage withholdings. The written notification:

1. Shall include the:
  - a. Name of the employee;
  - b. Social Security number of the employee;
  - c. Amount of the lump sum payment; and
  - d. Intended payment date, and
2. May include multiple employees on one (a)(1) written notification if information in accordance with subparagraph 1 of this paragraph is provided for each employee.

(b) Upon receipt of notification, pursuant to paragraph (1) of this subsection, the Division of Child Support shall determine if the

1. Employee owes an arrearage on an assigned support obligation; and

2. Requirements of KRS 405.465(1) are met.

(c) If the employee owes no arrearage, the Division of Child Support or its designee may notify the employer to release the lump sum payment to the employee.

(d) If the employee owes an arrearage, pursuant to subparagraph (b) of the subsection, the Division of Child Support or its designee shall initiate:

1. A court order to the employer in accordance with KRS 405.465; or

2. An administrative order in accordance with KRS 405.470.

(e) If the Division of Child Support or its designee does not contact the employer, the employer shall:

1. Hold the lump sum for thirty (30) calendar days, in accordance with KRS 405.465(6)(a), from the projected date of its release; and

2. Release the lump sum payment to the employee after the 30th calendar day, unless the employer has received from the Division of Child Support or its designee a court order or an administrative order to withhold any portion of the lump sum payment.

Section 3. Administrative Enforcement Actions. (1) If an obligor owes an arrearage equal to or greater than one (1) month's obligation, the cabinet may:

(a) File a lien on the obligor's interest in personal or real property by issuing:

a. [CS-92, Intrastate Notice of Lien,] for property within Kentucky, in accordance with KRS 205.745; or

b. [CS-85, Notice of Lien,] for property outside Kentucky in accordance with KRS 205.7785; and

2. Provide a [CS-119, Noncustodial Parent's Notice of Lien,] to the obligor notifying that:

a. The obligor may contest the lien as specified in 921 KAR 1:430 [Section 4 of this administrative regulation];

b. A transfer of property in order to avoid payment shall be considered an act of fraud, in accordance with KRS 405.060(2), and

c. If the obligor makes full payment of the arrearage, including interest, penalties, and fees, a [CS-120, Release of Lien,] shall be provided to the obligor;

(b) 1. Provide a CS-122 to the obligor notifying that:

a. Past-due amounts shall be reported to a certified consumer reporting agency; and

b. The obligor may contest the accuracy of the information by requesting an administrative hearing as specified in 921 KAR 1:430 [Section 4 of this administrative regulation];

2. Not submit the obligor's information for inclusion on the periodic report made available to certified consumer reporting agencies as specified in KRS 205.768, if:

a. The advance notice is returned as undeliverable; and

b. Subsequent location efforts are unsuccessful; and

3. Submit the obligor's name and arrearage amount for inclusion on a periodic report made available to a certified consumer reporting agency, if the obligor does not pay in full or appeal within thirty (30) calendar days from the date of notice.

(2) If an obligor owes an arrearage equal to or greater than six (6) month's of an assigned support obligation, as established in KRS 205.712(9) and (10), the cabinet shall:

(a) Determine if an obligor holds and, if so, take action against one (1) or more of the following

1. Professional license or certificate,

2. Occupational license or certificate;

3. Recreational license,

4. Sporting license; or

5. Driver's license, for arrearages that have accrued since January 1, 1994;

(b) Send to the obligor, by certified mail:

1. A [CS-44, Notice of Intent to Request Denial or Suspension,] which includes a section for an Answer to Notice of Intent;

2. Notification that the obligor may request an administrative hearing contesting the action as specified in 921 KAR 1:430 [Section 4 of this administrative regulation]; and

3. Notification that the [CS-63, Notice to Licensure/Certification Board or Agency,] shall be rescinded if the obligor:

gor:

a. Takes action as specified in Section 2(4)(g)[3] of this administrative regulation; or

b. Complies with a subpoena or warrant, in accordance with KRS 205.712(11).

(c) Refer the case for parent-locator service, if the CS-44 is returned and the forwarding address unknown;

(d) Send to the issuing agency or board of licensure or certification a CS-63, if:

1. There is no dispute; or

2. The obligor does not take an action specified in paragraph (b)3 of this subsection;

(e) Send to the issuing agency or board of licensure or certification a CS-63, within twenty (20) calendar days of the date of administrative hearing decision, if an administrative hearing results in a finding that the case qualifies for:

1. A license or certificate denial;

2. Suspension; or

3. Revocation; and

(f) Notify the issuing board or agency that the obligor is no longer deemed by the cabinet to be subject to denial, suspension, or revocation, if the obligor:

1. Takes action as specified in Section 2(4)(g)[3] of this administrative regulation, or

2. Complies with a subpoena or warrant.

(3) If an obligor owes an arrearage equal to or greater than one (1) year's obligation, the cabinet shall take action against a license to carry a concealed deadly weapon as specified in KRS 237.110(4).

(4) If an obligor owes an arrearage equal to or greater than six (6) months obligation of an assigned support obligation and fails to comply with a subpoena or warrant relating to a child support proceeding, the cabinet may enforce a lien on a vehicle registered to the obligor by immobilization with a vehicle boot as established in KRS 205.745(9).

(a) The cabinet shall give prior notice in accordance with paragraph (b)1 of this subsection to the obligor of the date the appropriate local law enforcement personnel intend to boot a vehicle.

(b) The delinquent obligor shall:

1. Have ten (10) calendar[40 (ten)] days to respond to a notice of intent to boot a vehicle; and

2. Take action as specified in Section 2(4)(g)[3] of this administrative regulation to release the vehicle boot.

(c) If the requirements in paragraph (b) of this subsection are met the:

1. Obligor shall pay the:

a. Forty (40) dollar cost of the removal of a vehicle boot to the appropriate local law enforcement personnel; and

b. Cost of towing and storage if a charge is incurred; and

2. Cabinet shall send a cancellation notice to the obligor and to the appropriate local law enforcement personnel to terminate the booting of the vehicle.

(5)[(4)] A newspaper publication of a list of delinquent obligors, as established in KRS 405.411, provided by the Cabinet for Health and Family Services, Department for Community Based Services, Division of Child Support, shall:

(a) Identify an obligor as specified by subsection (7)(a) of this section,

(b) Include the name, last known address, and the amount owed of the obligor meeting the criteria; and

(c) Be published no less than twice yearly.

[(5) If an obligor owes an arrearage equal to or greater than one (1) year's obligation, the cabinet shall take action against a license to carry a concealed deadly weapon as specified in KRS 237.110(4).]

(6) If the obligor owes an arrearage of \$2,500 or more, in accordance with 42 U.S.C. 652, the cabinet shall:

(a) Send in advance, a CS-122 notifying the obligor that his name is being submitted for passport denial, revocation, or limitation, as established in KRS 205.712(8);

(b) Forward the certified name and supporting documents to the Secretary of the U.S. Department of Health and Human Services for passport denial, revocation, or limitation; and

(c) Notify the Secretary of the U.S. Department of Health and



Human Services that the cabinet rescinds its request for passport denial, revocation, or limitation if:

1. The obligor's timely appeal is resolved with a finding that the arrearage is less than \$2,500;

2. The obligor is in compliance with payments ordered in an existing arrearage judgment;

3. A payment reduces the arrearage to less than \$2,500; or

4. The obligor takes action as specified in Section 2(4)(g)[3] of this administrative regulation.

(7) If an obligor owes an arrearage equal to or greater than \$10,000, the cabinet shall:

(a) Use the following criteria to designate an obligor for a delinquent listing:

1. The obligor's nonpayment within the last six (6) months;

2. The obligor's known address;

3. The cabinet is the payee for support; and

4. Audited arrearages by the cabinet within the last year;

(b) Provide to the Office of the Attorney General a delinquent listing no less than twice yearly for publication on the Internet, as established in KRS 205.712(16);

(c) Send to an obligor meeting the criteria in paragraph (a) of this subsection the [CS-175, Notice of Intent to Place Noncustodial Parent's Name on Delinquent Listing];

(d) Not include the obligor in the delinquent listing if the obligor takes action as specified in Section 2(4)(g)[3] of this administrative regulation;

(e) Accept an obligor's request for an administrative hearing as specified in 921 KAR 1:430[Section 4 of this administrative regulation];

(f) Refer the case for parent-locator service if the notice is returned and the forwarding address unknown;

(g) Include the obligor in the delinquent listing provided to the Office of the Attorney General if there is:

1. No dispute;

2. A hearing that results in a finding that the case qualifies for the delinquent listing; or

3. No action taken by the obligor as specified in Section 2(4)(g)[3] of this administrative regulation; and

(h) Advise the Office of the Attorney General to remove an obligor from the listing, if the obligor takes action as specified in Section 2(4)(g)[3] of this administrative regulation.

(8) If a person fails to comply with a subpoena or warrant relating to a paternity or child support proceeding, the cabinet shall:

(a) Pursue action in accordance with the provisions of subsection (2) of this section; and

(b) Notify the person that a license or certificate may be retained by complying with the subpoena or warrant.

Section 4. [Appeal Procedures. (1) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(2) An obligor may request and be granted an administrative hearing in accordance with KRS 406.450 based upon a mistake in fact, as defined in KRS 205.712(13), pertaining to an incorrect:

(a) Person identified as an obligor; or

(b) Current or past due support obligation.

(3) A request shall be made to the cabinet:

(a) In writing;

(b) In person; or

(c) Orally, later reduced to writing within the time frames as specified in subsection (4) of this section.

(4) The written request for an administrative hearing shall be considered timely if made within the timeframes established in an initial notice as follows:

(a) Ten (10) days for:

1. Income withholding; or

2. Intent to boot a vehicle;

(b) Fifteen (15) days for unemployment insurance withholding;

(c) Twenty (20) days for:

1. Order to withhold;

2. Lien;

3. Intent to request denial or suspension of a license or certificate; or

4. Intent to place the obligor's name on a delinquent listing; or

(d) Thirty (30) days for intent to collect past due support.

(5)(a) Prior to a hearing, the cabinet or designee shall schedule and hold an informal dispute conference with an obligor within ten (10) days of resolving the hearing request to attempt to resolve a dispute.

(b) If the informal dispute conference does not resolve the hearable issue, the cabinet or designee shall schedule an administrative hearing.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CS-44 Notice of Intent to Request Denial or Suspension", edition 9/06;

(b) "CS-63 Notice to Licensing/Certification Board or Agency", edition 9/06;

(c) "CS-68 Order to Withhold", edition 3/08[9/06];

(d) "CS-69 Answer to Withhold", edition 9/06;

(e) "CS-70 Release of Order to Withhold", edition 9/06;

(f) "CS-72 National Medical Support Notice", edition 9/06;

(g) "CS-73 Unemployment Insurance Letter", edition 3/08[9/06];

(h) "CS-76 Unemployment Insurance Notice of Withholding", edition 3/08[9/06];

(i) "CS-78 Payment Agreement", edition 9/06;

(j) "CS-83 Order to Deliver", edition 9/06;

(k) "CS-85 Notice of Lien", edition 9/06;

(l) "CS-89 Order/Notice to Withhold Income for Child Support", edition 3/08[9/06];

(m) "CS-92 Intrastate Notice of Lien", edition 3/08[9/06];

(n) "CS-119 Noncustodial Parent's Notice of Lien", edition 3/08[9/06];

(o) "CS-120 Release of Lien" edition 9/06;

(p) "CS-121 Noncustodial Parent's Answer to Withhold", edition 9/06;

(q) "CS-121. 1. Noncustodial Parent's Answer to Withhold-Limited Enforcement of Interstate Cases", edition 3/08[9/06];

(r) "CS-122 Advance Notice of Intent to Collect Past-Due Support", edition 3/08[9/06];

(s) "CS-164 Notice of Income Withholding" edition 9/06; and

(t) "CS-175 Notice of Intent to Place Noncustodial Parent's Name on Delinquent Listing", edition 3/08[9/06];

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK A. WASHINGTON, Commissioner

TOM EMBERTON, JR. Secretary

APPROVED BY AGENCY: December 10, 2007

FILED WITH LRC: December 14, 2007 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2008 at 9 a.m. in the Health Services Board Room, on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearinger, (502) 564-3556

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for and enforcement of child support.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for collection of assigned support obligations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 205.712, KRS 1974A.505(1), and by virtue of applying for federal funds under 42 U.S.C. 654,659, and 666, to manage, collect and enforce assigned support obligations. This administrative regulation conforms to the authorizing statutes by establishing procedures for collection of assigned support obligations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures used by the Cabinet to collect assigned support orders.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation: The amendment to this regulation updates and corrects forms and makes other corrections to comply with KRS Chapter 13A. The appeal procedures were removed from this regulation concurrent with the newly proposed regulation 922 KAR 1:430, which will govern appealable matters in Kentucky's child support program.

(b) The necessity of the amendment to this administrative regulation: This amendment was necessary to make corrections in order to comply with state and federal requirements governing Kentucky's child support program.

(c) How the amendment conform to the content of the authorizing statutes: This amendment will ensure Kentucky's child support program is in compliance with its governing federal and state requirements.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation conforms to the authorizing statutes by establishing procedures for collection of assigned support obligations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 334,663 active child support cases in Kentucky as of 10/07. These cases, their case members, and the employers of obligors will be impacted by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will not impose a significant impact to those entities listed in item (3). Primarily, the amendment corrects/updates incorporated materials and includes technical corrections for greater clarity.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulatory amendment is cost neutral to entities listed in item (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Incorporated materials, used by affected entities, will be updated in accordance with state and federal requirements. Appeal procedures for Kentucky's child support program will be located in one new administrative regulation. The amendment also enhances clarity for affected entities through technical corrections.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional funding is required.

(b) On a continuing basis: No additional funding is required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include State General Funds and federal funds

under Title IV-D of the Social Security Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering has not been applied. The requirements established in this administrative regulation will be applied in a like manner on a statewide basis.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. C.F.R. 302.60, 320.65, 303.6, 303.32, 303.72, 303.100-303.102, 303.104, U.S.C. 1673, U.S.C. 652, 654, 659, 666(a)(1)-4), (6)-(12),(14)-(17), (19), (b), Pub.L. 109-171.

2. State compliance standards. KRS 194A.050(1), 205.712.

3. Minimum or uniform standards contained in the Federal mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None imposed.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services, Division of Child Support, will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.055(2), 194A.050(1), 205.712(2)(o), 205.712(16), 205.745(9), 205.7685(3), 205.795, 405.411(2), 405.520, 42 U.S.C. 654, 659, 666(a)(1)-(4), (6)-(12), (14)-(17), (19), (b), (c)(1)(G).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Child Support Program has been operational for numerous years and does not directly generate any revenue. This administrative regulation will not generate any additional revenues in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Child Support Program has been operational for numerous years and does not directly generate any revenue. This administrative regulation will not generate any additional revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? The Child Support Program has been operational for numerous years. This administrative regulation will not require any additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? The Child Support Program has been operational for numerous years. This administrative regulation will not require any additional costs in subsequent years.

Note If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Family Support**  
**(Amendment)**

**921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.**

RELATES TO: KRS 209.020(4), 216.557(1), 216.750(2), 216B.010-216B.131, Chapter 514, 20 C.F.R. 416.120, 416.212, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1383

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement with the U.S. Department of Health and Human Services Commissioner in effect, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020(4).

(2) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind or had a disability.

(3) "Department" means the Department for Community Based Services or its designee.

(4) "Elder Shelter Network" means a temporary shelter for a victim of elder abuse.

(5) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(6) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 921 KAR 2:006.

(7) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Mental Health and Mental Retardation Services to employ a mental health professional who has specialized training in the care of a resident with mental illness or mental retardation.

(8) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

(b) 1. The total of the SSI payment; or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 8 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 6, 7, and 8 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 1.011, Sections 1(5), 5(5), (6), (7), (13), 10, and 11;

(b) 907 KAR 1:640, Sections 1(1), (6), (7), (10), 3(4);

(c) 907 KAR 1:645;

(d) 907 KAR 1:650, Section 1(7); and

(e) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 8 of this administrative regulation; and

(c) 1. Resides in a personal care home and is sixteen (16) years of age or older in accordance with 902 KAR 20.036, Section 3(3)(a);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20.041, Section 3(14); or

3. Receives caretaker services and is at least eighteen (18) years of age

(2) A full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131;

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in 902 KAR 20.041; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) A situation in which a caretaker is required to be hired to provide care other than room and board.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation;

or

- b. Residence; or
- 2. Death of the state supplementation recipient; and
- (b) Notify a local county department office within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

- 1. Discharge to a:
  - a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation;
  - b. Another personal care or family care home; or
  - c. Residence; or
- 2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

- 1. Death or discharge of the state supplementation recipient; or
- 2. Voluntary relinquishment of a license to the Office of Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2 of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) A service by a caretaker shall be made to enable an adult to

(a) Remain safely and adequately:

- 1. At home;
- 2. In another family setting; or
- 3. In a room and board situation; and
- (b) Prevent institutionalization.

(2) A service by a caretaker shall be made at regular intervals

by:

- (a) A live-in attendant; or
- (b) One (1) or more persons hired to come to the home.
- (3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

- (a) Often the service is provided;
- (b) The service prevents institutionalization; and
- (c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

- (a) Client is taken daily or periodically to the home of the caretaker; or
- (b) Caretaker service is provided by the following persons living with the applicant:

- 1. The spouse;
- 2. Parent of an adult or minor child who has a disability; or
- 3. Adult child of a parent who is aged, blind or has a disability.

Section 6. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

- (a) 907 KAR 1.640, Sections 1(1), (6), (7), (10), and 3(4);
- (b) 907 KAR 1.645;
- (c) 907 KAR 1.650, Section 1(7); and
- (d) 907 KAR 1.660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

- (a) \$2000 for individual; or
- (b) \$3000 for couple.

Section 7. Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, income and earned income

deductions shall be considered according to the policy for the medically needy in accordance with:

- (a) 907 KAR 1.640, Sections 1(1), (6), (7), (10), and 3(4);
- (b) 907 KAR 1.645;
- (c) 907 KAR 1.650, Section 1(7); and
- (d) 907 KAR 1.660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) The optional supplementation payment shall be determined by:

(a) Adding:

- 1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and
- 2. A payment made to a third party on behalf of an applicant or recipient; and

(b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 8 of this administrative regulation.

(3) Income of an ineligible spouse shall be:

- (a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and
- (b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

- 1. Himself; and
- 2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollars general exclusion shall not be an allowable deduction from income.

(9)(a) For a resident in the Elder Shelter Network Program, income and resources of the spouse shall be disregarded for the month of separation.

(b) A third-party payment on behalf of an applicant or recipient made by the Elder Shelter Network Program shall be disregarded for ninety (90) days from the date of admission.

Section 8. Standard of Need. (1) To the extent funds are available, the standard shall be based on the living arrangement of an eligibility determination as follows:

(a) A resident of a personal care home made on or after January 1, 2008, \$1,157(2007, \$1,443);

(b) A resident of a family care home made on or after January 1, 2008, \$809(2007, \$795), or

(c) Caretaker:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made on or after January 1, 2008, \$699(2007, \$685);

2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 2008, \$1,017(2007, \$1,003); or

3. An eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 2008, \$1,071(2007, \$1,049).

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollars personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance that shall be retained by the client.

Section 9. Temporary Stay in a Medical Facility. (1) An SSI

recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary; and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:

(a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;

(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and

(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission; and

2. The physician statement specified in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following health care facilities

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge

Section 10. Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified alien.

Section 11. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 12. Persons with Mental Illness or Mental Retardation Supplement. (1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem:

1. For a state supplementation recipient in the personal care home's care; and

2. As of the first calendar day of a qualifying month;

(b) Shall not be eligible for a payment for a Type A Citation that is not corrected; and

(c) Shall meet the following certification criteria for eligibility to participate in the Mental Illness or Mental Retardation Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;

2. Care for a thirty-five (35) percent mental illness or mental retardation population in all of its occupied licensed personal care home beds who have a:

a. Primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician

training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of Inspector General in accordance with Section 14(2) through (4) of this administrative regulation; and

6. File an "STS-1, Mental Illness/Mental Retardation (MI/MR) Supplement Program Application for Benefits", Application for Mental Illness or Mental Retardation Supplement Program Benefits" with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July and October.

b. Unless mental illness or mental retardation supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process

(3) The department shall mail an "STS-2, Notice of Decision to Personal Care Home" to a personal care home following:

(a) Receipt of verification from the Office of Inspector General as specified in Section 14(6) of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall

(a) Provide the department with an "STS-3, Mental Illness/Mental Retardation (MI/MR) Supplement Program Monthly Report Form" that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the resident's Social Security number; and

3. Annotates the form, in order to maintain confidentiality, as follows with a:

a. Star indicating a resident has a mental illness or mental retardation diagnosis;

b. Check mark indicating a resident receives state supplementation; and

c. Star and a check mark indicating the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation; and

(b) Mail the STS-3 to the department postmarked by the fifth working day of the month.

(5) The monthly report shall be used by the department for:

(a) Verification as specified in subsection (4)(a) of this section;

(b) Payment; and

(c) Audit purposes.

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 13. Mental Illness or Mental Retardation Basic Training. (1)(a) A personal care home's licensed nurse, or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health and Mental Retardation Services

(b) Other staff may attend the basic training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

(b) Side effects and adverse medication reactions with special attention to psychotropics;

(c) Signs and symptoms of an acute onset of a psychiatric episode;

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or mental retardation;

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation; and

(f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or mental

retardation.

(3) Initial basic training shall:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator; and

(b) Be in the quarter during which the STS-1 is filed with the department.

(4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and four (4) other staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician training, and

2.a Has received mental illness or mental retardation basic training; or

b. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Mental Health and Mental Retardation Services may provide advanced level training for a personal care home.

(a) Advanced level training shall be provided through a one (1) day workshop

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or mental retardation

(d) Attendance of an advanced level training workshop shall be optional.

(6) The Department for Mental Health and Mental Retardation Services shall provide within five (5) working days a:

(a) Certificate to direct care staff who complete the workshop; and

(b) Listing to the department of staff who completed the training workshop.

(7) Unless staff turnover occurs as specified in subsection (4)(a) of this section, the department shall pay twenty-five (25) dollars to a personal care home:

(a) Who has applied for the Persons with Mental Illness or Mental Retardation Supplement Program; and

(b) For each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home

**Section 14. Persons with Mental Illness or Mental Retardation Supplement Program Certification.** (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program.

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey:

1. May be separate from an inspection in accordance with KRS 216.530, and

2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2 of this subsection.

(c) The department shall notify the Office of Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of Inspector General shall

(a) Observe and interview residents and staff, and

(b) Review records to assure the following criteria are met.

1. Except for a specialized personal care home, certification is

on file at the personal care home to verify staff's attendance of basic training, as specified in Section 13(1) through (4) of this administrative regulation;

2. The personal care home

a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop; and

b. Maintains documentation of attendance at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training.

a. Demonstrates a knowledge of psychotropic drug side effects; and

b. Is on duty as specified in Section 12(1)(c)3 of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall also be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey process.

(4) If thirty-five (35) percent mental illness or mental retardation population, as specified in Section 12(1)(c)2 of this administrative regulation, is met on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 12(6)(a) of this administrative regulation.

(6) The Office of Inspector General shall provide the department with a completed "STS-4, Mental Illness or Mental Retardation Supplement Certification Survey" within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

(7) The Office of Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department:

(a) Monthly; and

(b) By the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of Inspector General, established in 921 KAR 2:050.

(9) If a criterion for certification is not met, the department shall mail an STS-2 to a personal care home following receipt of the survey by the Office of Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the requested information on the STS-2:

(a) Relevant to unmet certification criteria specified on the STS-4; and

(b) Within ten (10) working days after the STS-2 is mailed.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(12) If a personal care home is discontinued from the Mental Illness or Mental Retardation Supplement Program, the personal care home may reapply for certification, as specified in Section 12(1)(c)6 of this administrative regulation, for the next following quarter.

**Section 15. Hearings and Appeals.** An applicant or recipient of benefits under a program described in this administrative regula-



tion who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "STS-1, Mental Illness/Mental Retardation (M/MR) Supplement Program Application for Benefits", edition 1/07;
- (b) "STS-2, Notice of Decision to Personal Care Home", edition 1/07;
- (c) "STS-3, Mental Illness/Mental Retardation (M/MR) Supplement Program Monthly Report Form", edition 1/07; and
- (d) "STS-4, Mental Illness or Mentally Retardation Supplement Certification Survey", edition 1/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK A. WASHINGTON, Commissioner

TOM EMBERTON, JR., Secretary

APPROVED BY AGENCY: December 6, 2007

FILED WITH LRC: December 7, 2007 at 10 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008 at 9 a.m. in the Health Services Board Room, Health Services Building, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a program for supplemental payments to persons requiring care in a personal care or family care home or receiving caretaker services in accordance with KRS 205.245

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the Persons with Mental Illness or Mental Retardation Supplement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 205.245 by complying with an agreement with the U.S. Department of Health and Human Services to pass along any Supplemental Security Income benefit increases to State Supplementation recipients. This administrative regulation also conforms to KRS 194A.050(1) which requires the Secretary to adopt administrative regulations necessary under applicable state laws to operate programs and fulfill responsibilities vested in the Cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes eligibility requirements and payment standards for the State Supplementation Program for personal care, family care and caretaker services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of

(a) How the amendment will change this existing administrative

regulation: This administrative regulation is necessary to change the standards for all levels of care for the State Supplementation Program due to the federal and state's agreement to pass through the Supplemental Security Income 2008 cost of living adjustment (COLA), an increase of 2.3%.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is needed to comply with the agreement the Commonwealth of Kentucky has with the U.S. Department of Health and Human Services to pass along any cost of living adjustments in Supplemental Security Income benefits to State Supplementation Program recipients. Failure to comply with this agreement jeopardizes the state's Medicaid funds pursuant to 20 C.F.R. 416.2099. The Social Security Administration notified the Department for Community Based Services of the amount of the Supplemental Security Income cost of living adjustment in October 2007.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 205.245 by complying with an agreement between Kentucky and the U.S. Department of Health and Human Services to pass along any Supplemental Security Income benefit increases to State Supplementation recipients.

(d) How the amendment will assist in the effective administration of the statutes: This amendment passes along the 2008 cost of living adjustment for the Supplemental Security Income benefit, a 2.3% increase, by modifying the standard of payments for all levels of care for the State Supplementation Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of October 2007, there are 4,298 state supplementation recipients.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The State Supplementation payment to a Personal Care Home is \$1,157 minus the personal care allowance of \$60 to the State Supplementation recipient. The payment to a Family Care Home is \$809 minus the personal care allowance of \$40 to the recipient. The payment to a caretaker of a single person is \$699. The payment to a caretaker of a couple, one requiring care, is \$1017. The payment to a caretaker of a couple, both requiring care, is \$1071.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The recipients of the State Supplementation payment will receive a 2.3% cost of living adjustment.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be a cost of \$224,900 for the first year to the Cabinet for Health and Family Services to implement the mandated pass along of the 2008 SSI cost of living adjustment. The COLA was included in the enacted budget.

(b) On a continuing basis: There will be a cost of \$449,800 to the Cabinet for Health and Family Services on a continuing basis to implement the mandated pass along of the 2008 SSI cost of living adjustment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds/Agency Funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no fees in this administrative regulation

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, and it does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, as the

application of this administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the Federal mandate. 42 U.S.C. 1382 e-g
2. State compliance standards. KRS 194A.050(1), 205.245
3. Minimum or uniform standards contained in the Federal mandate. The provisions of the administrative regulation comply with the Federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the Federal mandate. This administrative regulation will impose no stricter requirements or additional or different responsibilities or requirements.
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This administrative regulation will impose no stricter requirements or additional or different responsibilities or requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.245, 42 U.S.C. 1382 e-g
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The State Supplementation Program has been operational for many years and does not generate any revenue. This amendment will not generate additional revenue in the first year.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The State Supplementation Program has been operational for many years and does not generate any revenue. This amendment will not generate additional revenue in subsequent years.
  - (c) How much will it cost to administer this program for the first year? It will cost \$224,900 to administer this program for the current fiscal year. This amount was included in the enacted budget.
  - (d) How much will it cost to administer this program for subsequent years? The annual cost to administer this program is \$449,800. This amount was included in the enacted budget.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

922 KAR 1:350. Family preparation.

RELATES TO: KRS 61.870-61.884, 194A.060, 199.011(7), 202A.011(12), 311.720(9), 311.840(3), 314.011(5), (7), and (9), 605.090, [605-490], 620.030, 620.050, Chapter 625, 16 C.F.R.

1508 and 1509 [4000-4750], 45 C.F.R. Parts 160, 164, [45-G.F.R. 4366-34], 8 U.S.C. 1151, 42 U.S.C. 671(a)(23)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 605.100(1)[, 605-150]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 605.100(1) requires the cabinet to arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective problems, needs, and characteristics. KRS 199.472 authorizes [and 605-150 authorize] the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood. This administrative regulation establishes criteria for resource homes and respite care providers caring for foster or adoptive children.

Section 1. Definitions. (1) "Applicant" means an individual or family, subject to approval by the cabinet as a resource home.

(2) "Commissioner" means commissioner of the Department for Community Based Services.

(3) "Department" means Department for Community Based Services.

(4) "Health professional" means a person actively licensed [in Kentucky] as a:

(a) Physician as defined by KRS 311.720(9);

(b) Physician's assistant as defined by KRS 311.840(3);

(c) Advanced registered nurse practitioner as defined by KRS 314.011(7); or

(d) Registered nurse as defined by [in] KRS 314.011(5) under the supervision of a physician.

(5) "Independent living services" means services provided to youth to assist them in the transition from the dependency of childhood to living independently.

(6) "Medically-fragile child" means a child who has a medical condition as defined in Section 6(1)(b) of this administrative regulation.

(7) "Professional experience" means paid employment or volunteer work in a setting where there is supervision and periodic evaluation.

(8) "Resource home" means a home in which a parent is approved by the cabinet to provide services as specified in Section 3(12) of this administrative regulation.

(9) "Respite care" means temporary care provided by a provider, as specified in Section 21 of this administrative regulation, to:

(a) Provide relief to the resource [foster] home parents; or

(b) Allow for an adjustment period for the child in out-of-home care.

(10) "Specialized medically-fragile child" means a child determined by the cabinet to have a medical condition, documented by a physician, that is severe enough to require placement with a resource home parent who is a:

(a) Health professional;

(b) [Registered nurse as defined in KRS 314.011(5); or

(c) Licensed practical nurse as defined by [in] KRS 314.011(9).

Section 2. Out-of-home Placement in a Resource Home Providing Only Foster Care Services. (1) An exception may be granted in limited situations for:

(a) No more than five (5) children, including children under the custodial control of the cabinet and the resource home parent's own children living at home, shall reside in a resource home that provides only foster care services; and

(b) A medically fragile child in a placement other than an approved medically fragile home.

(2) To request an exception to subsection (1) of this section, the following forms shall be submitted to designated [regional] cabinet staff within ten (10) working days of placement:

(a) DPP-112[-]A, Placement Exception Request; and

(b) DPP-112[-]B, Placement Exception [Resource-Foster-Exception] Plan, documenting the:

1. Reason the placement is in the best interest of the child; and
2. Specific support services to be provided.

(3) Unless an exception is approved pursuant to subsection (2) of this section, no more than two (2) children under age two (2), including children placed in out-of-home care by the cabinet and the resource home parent's own children, may reside at the same time in a resource home that provides only foster care services; ~~unless an exception is approved pursuant to subsection (2) of this section~~.

(4) Cabinet staff shall inform the resource home parent of conditions related to the child in accordance with:

- (a) KRS 605.090(1)(b); and
- (b) KRS 605.090(6).

Section 3. General Requirements for a Resource Home Parent. (1) Unless approved by designated [regional] cabinet staff, a resource home applicant shall:

- (a) Be at least twenty-one (21) years of age; and
  - (b) Show proof of the applicant's United States citizenship or legal immigrant status, as described in 8 U.S.C. Sec. 1151.
- (2) A resource home applicant between eighteen (18) to twenty-one (21) years of age may be approved as a resource home parent if:

- (a) The resource home applicant is related to the [a] child under the custodial control of the cabinet;
- (b) The resource home applicant can meet the needs of the child; and
- (c) Cabinet staff determines the placement is in the best interest of the child.

(3) A department employee who provides protection and permanency services may apply to adopt a child in the care and custody of the cabinet if the:

- (a) Department employee:
  1. Had no relationship with the child or a parent of the child prior to the termination of parental rights in accordance with KRS Chapter 625; or
  2. Has adopted a sibling of the child available for adoption; and
- (b) Commissioner approves the employee to adopt.

(4) A department employee who provides protection and permanency services shall be prohibited from becoming a respite care provider or resource home parent who provides foster care services or respite care for a child in the care and custody of the cabinet, regardless of the child's residence, unless the:

- (a) Department employee was a resource home parent or a respite care provider for the child when employment with the department began; and
- (b) Commissioner approves the employee to be a respite care provider or resource home parent who provides foster care services or respite care for the child.

(5) A married couple may apply to become resource home parents.

(6) A single unmarried person may apply to become a resource home parent.

(7) The decision to foster or adopt a child shall be agreed to by each adult member of the applicant's household.

(8)(a) Each adult member of the applicant's family shall submit a DPP-107, Health Information Required for Resource Home Applicants [Applicant] or Adult Household Members, completed:

1. By a health professional, stating that the individual is free of:
  - a. Communicable or infectious disease, or
  - b. Condition that presents a health or safety risk to a child placed in the applicant's home; and
2. As a part of:
  - a. The initial application, or
  - b. A resource home review pursuant to Section 17 of this administrative regulation.

(b) Each resource home parent applicant shall submit a DPP-107 current within one (1) year, completed by a health professional, attesting to the parent applicant's:

1. General health, including that the applicant is free of communicable diseases [tuberculosis]; and
2. Medical ability to care for a child placed in the applicant's home.

(9) Each resource home parent applicant shall submit a DPP-108, Health Information Required for Resource Home Applicants Regarding Dependent Children, for each child member of the applicant family.

- (10) A resource home applicant shall have a source of income:
- (a) Sufficient to meet the applicant's household expenses; and
  - (b) Separate from:

1. Foster [or resource home] care reimbursement; or
2. Adoption assistance

(11) Unless specified in a contract between the cabinet and a child welfare agency that provides foster care services, a resource home parent shall accept a child for foster care only from the cabinet.

(12) An approved resource home parent shall be willing to:

- (a) Provide foster care services for a child placed in out-of-home care by the cabinet;

(b) Adopt a child:

1. Whose parent's parental rights have been terminated; and
2. Who is under the custodial control of the cabinet;

(c) Provide respite care for a child under the custodial control of the cabinet; or

(d) Provide any combination of the services described in paragraphs (a) through (c) of this subsection.

(13) A resource home applicant shall provide to the cabinet:

(a) The names of three (3) personal references who:

1. Are not related to the applicant; and
- 2 a. Shall be interviewed by cabinet staff in person or by telephone; or
- b. Shall provide letters of reference for the applicant; and
- (b) Two (2) credit references.

(14) Adult children of the resource home applicant who do not live in the home shall be contacted by cabinet staff regarding applicant's parenting history.

(15) If applicable, verification shall be obtained from the resource home applicant regarding

- (a) Previous divorce;
- (b) Death of a spouse; and
- (c) Present marriage.

(16) A resource home applicant who does not have custody of his own biological child shall provide:

- (a) A copy of the visitation order, if applicable;
- (b) A copy of the child support order; and
- (c) Proof of current payment of child support.

(17) A resource home applicant and any member of the applicant's household shall submit to the background checks in accordance with 922 KAR 1:490.

(18) The cabinet shall perform background checks in accordance with criteria established in 922 KAR 1:490.

Section 4. Home Environment. (1)(a) Following approval as a resource home, the resource home may request written approval from designated [regional] cabinet staff to provide services as a certified:

1. Provider of supports for community living in accordance with 907 KAR 1:145; or

2. Family child care home in accordance with 922 KAR 2:100.

(b) Except as provided in paragraph (a) of this subsection, an approved resource home shall not simultaneously:

1. Provide day care center services in accordance with 922 KAR 2:090, and

2. Be used as a licensed or certified health care or social service provider.

(2) If the resource home adjoins a place of business open to the public, potential negative impact on the family and the child shall be examined including the:

- (a) Hours of operation;
- (b) Type of business; and
- (c) Clientele.

(3) The resource home parent shall have access to:

- (a) Reliable transportation;
- (b) School;
- (c) Recreation;
- (d) Medical care; and
- (e) Community facilities.

- (4) A resource home parent who drives shall:
- (a) Possess a valid driver's license;
  - (b) Possess proof of liability insurance; and
  - (c) Abide by passenger restraint laws.
- (5) Up to four (4) children, including the resource home parent's own children, may share a bedroom.
- (6) Each child shall have:
- (a) ~~A [His own] separate bed that is~~ an age and size appropriate for the child; or
  - (b) If the child is under age one (1), a crib that meets Consumer Products Safety Commission standards, 16 C.F.R. 1508 and 1509 [1000 to 1750].
- (7) Except as approved by designated [regional] cabinet staff, a resource home parent shall not share a bedroom with a child under the custodial control of the cabinet.
- (8) A bedroom used by a child under the custodial control of the cabinet shall be comparable to each bedroom in the house.
- (9) The physical condition of the resource home shall:
- (a) Not present a hazard to the safety and health of a child;
  - (b) Be well heated and ventilated;
  - (c) Comply with state and local health requirements regarding water and sanitation; and
  - (d) Provide indoor and out-of-door recreation space appropriate to the developmental needs of a child placed in the resource home.
- (10) The following shall be inaccessible to a child:
- (a) Medication;
  - (b) Alcoholic beverage;
  - (c) Poisonous or cleaning material;
  - (d) Ammunition; and
  - (e) Firearms.
- (11) Ammunition and firearms shall ~~not~~ be stored in separate, locked containers [together and each shall be locked away].
- (12) A dangerous animal shall not be allowed near the child.
- (13) Medication shall be kept in a locked container.
- (14) First aid supplies with unexpired dates shall be available and stored in a place easily accessible to an adult.
- (15) A working telephone shall be available in the home.
- (16) The home shall be equipped with a working smoke alarm within ten (10) feet of each bedroom.

Section 5. Emergency Shelter Resource Home. (1) An applicant may be approved as an emergency shelter resource home if the parent:

- (a) Meets the requirements of Sections 3 and 4 of this administrative regulation;
- (b) Cares for a child age twelve (12) and above who needs immediate, unplanned care for ~~[less than] fourteen (14) days or less,~~ unless designated [regional] cabinet staff approve:
  1. An exception to the minimum age ~~[of twelve (12)]~~ for a child [between] age eight (8) or over [and twelve (12)]; or
  2. An extension to the ~~[fourteen (14)]~~ days of unplanned care, not to exceed a period of sixteen (16) days; and
- (c) Completes ten (10) hours of cabinet-sponsored training or training approved in advance by the cabinet beyond the initial thirty (30) hours of family preparation as required by Section 9 of this administrative regulation.
- (2) An approved emergency shelter resource home parent shall receive reapproval as an emergency shelter resource home if the parent completes ten (10) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet:
  - (a) Beyond the annual six (6) hour requirement specified in Section 15 of this administrative regulation; and
  - (b) Before the anniversary date of the original approval as a resource [an emergency shelter] home.

Section 6. Medically-fragile Resource Home. (1) An applicant may be approved by cabinet staff as a medically-fragile resource home if the resource home parent:

- (a) Meets the requirements in Sections 3 and 4 of this administrative regulation;
- (b) Cares for a child approved by cabinet staff as medically-fragile because of a:
  1. Medical condition documented by a physician that may be-

come unstable and change abruptly resulting in a life-threatening situation;

2. Chronic and progressive illness or medical condition;
3. Need for a special service or ongoing medical support; or
4. Health condition stable enough to be in a home setting only with monitoring by an attending:
  - a. Health professional;
  - b. Registered nurse as defined by [in] KRS 314.011(5); or
  - c. Licensed practical nurse as defined by [in] KRS 314.011(9),
- (c) Is a primary caretaker who is not employed outside the home, except as approved by designated [regional] cabinet staff;
- (d) Completes:
  1. A medically-fragile curriculum approved by the cabinet, or
  2. An additional,
    - a. Twenty-four (24) hours of cabinet-sponsored training or training approved in advance by the cabinet, beyond the family preparation as required by Section 9 of this administrative regulation, in the areas of:
      - (i) [a-] Growth and development;
      - (ii) [b-] Nutrition; and
      - (iii) [c-] Medical disabilities, or
    - b. Sixteen (16) hours of cabinet-sponsored training or training approved in advance by the cabinet, beyond the family preparation as required by Section 9 of this administrative regulation, if the resource parent holds a current certificate in cardiopulmonary resuscitation (CPR) and first aid;
  - (e) Receives training from a health professional in how to care for the specific medically-fragile child who shall be placed;
  - (f) Maintains current certification in:
    1. [Cardiopulmonary resuscitation or -] CPR[?]; and
    2. First aid; and
  - (g) Has a home within:
    1. One (1) hour of a medical hospital with an emergency room; and
    2. Thirty (30) minutes of a local medical facility.
  - (2) Professional experience related to the care of a medically-fragile child may substitute for the training requirement specified in subsection (1)(d) of this section:
    - (a) Upon the approval of designated [regional] cabinet staff, and
    - (b) If the resource home parent is a:
      1. Health professional;
      2. Registered nurse as defined by [in] KRS 314.011(5); or
      3. Licensed practical nurse as defined by [in] KRS 314.011(9).
    - (3) Except for a sibling group or unless approved by designated [regional] cabinet staff, no more than four (4) children, including the resource home parent's own children, shall reside in a medically-fragile resource home.
    - (4) Unless an exception is approved pursuant to Section 2(2) of this administrative regulation and if a medically-fragile resource home has daily support staff to meet the needs of a medically-fragile child:
      - (a) A one (1) parent medically-fragile resource home shall:
        1. Not care for more than one (1) medically-fragile child; and
        2. Demonstrate access to available support services; and
      - (b) A two (2) parent medically-fragile resource home shall:
        1. Not care for more than two (2) medically-fragile children; and
        2. Demonstrate access to available support services.
      - (5) Unless an exception pursuant to Section 2(2) of this administrative regulation is approved, a medically-fragile child shall be placed in an approved medically-fragile home.
      - (6) Unless the resource home is closed, pursuant to Section 18 of this administrative regulation, an approved medically-fragile resource home parent shall receive annual reapproval by the cabinet as a medically-fragile resource home if the parent:
        - (a) Annually completes, prior to the anniversary date of the original approval as a resource home:
          1. Twenty-four (24) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet; or
          2. Sixteen (16) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet, if the resource home parent maintains certification in CPR and first aid; [before the anniversary date of approval as a medically-fragile home,] and
        - (b) Continues to meet the requirements of this section.

(7)(6) An approved medically-fragile resource home parent shall cooperate in carrying out the child's health plan.

Section 7. Care Plus Resource Home. (1) An applicant may be approved by cabinet staff as a care plus resource home parent if the resource home parent:

(a) Meets the requirements of Sections 3 and 4 of this administrative regulation;

(b) Cares for a child approved by cabinet staff as a care plus child because the child [who]:

1. Has an emotional or behavioral problem;
2. Is due to be released from a treatment facility;
3. Displays aggressive, destructive, or disruptive behavior;
4. Is at risk of being placed in a more restrictive setting;
5. Is at risk of institutionalization; or
6. Has experienced numerous placement failures;

(c) Is a primary caretaker who is not employed outside the home, except as approved by designated [regional] cabinet staff;

(d) Completes and receives a certificate of completion for the twenty-four (24) hour care plus resource home training beyond the family preparation as required in Section 9 of this administrative regulation;

(e) Maintains a daily record of the child's activities and behaviors; and

(f) Attends all case planning conferences.

(2) Unless an exception is approved pursuant to Section 2(2) of this administrative regulation and the care plus resource home has daily support staff to meet the needs of a child described in subsection (1)(b) of this section:

(a) No more than four (4) children, including the resource home parent's own children, shall reside in a care plus resource home.

(b) 1. A one (1) parent care plus resource home shall:

a. Not care for more than one (1) child as described in subsection (1)(b) of this section; and

b. Demonstrate access to available support services; and

2. A two (2) parent care plus resource home shall:

a. Not care for more than two (2) children as described in subsection (1)(b) of this section and, including the care plus resource home parent's own child; and

b. Demonstrate access to available support services.

(3) Unless the resource home is closed pursuant to Section 18 of this administrative regulation, an approved care plus resource home parent may receive annual reapproval by the cabinet as a care plus resource home, if the parent:

(a) Annually completes twenty-four (24) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet before the anniversary date of the original approval as a [care-plus] resource home; and

(b) Submits to a review of the parent's:

1. Strengths and needs;
2. Records maintained on services provided to the child; and
3. Ability to meet the goals established for the child; and

(c) Continues to meet the requirements of this section.

(4) Professional experience related to the care of a child described in subsection (1)(b) of this section may substitute for the training requirement specified in subsection (3)(6)(a) of this section, if the care plus resource parent is a qualified mental health professional as defined by [in] KRS 202A.011(12).

Section 8. Specialized Medically-fragile Resource Home. (1) An applicant may be approved by cabinet staff as a specialized medically-fragile resource home if the applicant:

(a) Meets the requirements in Sections 3 and 4 of this administrative regulation;

(b) Cares for a child approved by cabinet staff as a specialized medically-fragile child;

(c) Is a primary caretaker who is not employed outside the home, except as approved by designated [regional] cabinet staff;

(d) Completes:

1. A medically-fragile curriculum approved by the cabinet; or
2. An additional;

a. Twenty-four (24) hours of cabinet-sponsored training or training approved in advance by the cabinet beyond the family preparation required in Section 9 of this administrative regulation,

in the areas of:

(i)[a-] Growth and development;

(ii)[b-] Nutrition; and

(iii)[c-] Medical disabilities; or

b. Sixteen (16) hours of cabinet-sponsored training or training approved in advance by the cabinet beyond the family preparation required in Section 9 of this administrative regulation, if the resource home parent maintains certification in CPR and first aid;

(e) Receives individual documented training from a health professional or licensed practical nurse as defined by KRS 314.011(9) in how to care for the specific specialized medically-fragile child who shall be placed in the resource [center] home;

(f) Maintains current certification in:

1. CPR, and

2. First aid; and

(g) Has a home within:

1. One (1) hour of a medical hospital with an emergency room; and

2. Thirty (30) minutes of a local medical facility.

(2) Unless an exception is approved pursuant to Section 2(2) of this administrative regulation, no more than four (4) children, including the resource home parent's own children, shall reside in a specialized medically-fragile resource home.

(3) Unless an exception is approved pursuant to Section 2(2) of this administrative regulation and if a specialized medically-fragile resource home has daily support staff to meet the needs of a medically-fragile child:

(a) A one (1) parent specialized medically-fragile resource home shall:

1. Not care for more than one (1) specialized medically-fragile child, and

2. Demonstrate access to available support services, and

(b) A two (2) parent specialized medically-fragile resource home shall:

1. Not care for more than two (2) specialized medically-fragile children; and

2. Demonstrate access to available support services.

(4) An approved specialized medically-fragile resource home parent shall receive annual reapproval as a specialized medically-fragile resource home if the parent:

(a) Annually completes, prior to the anniversary date of the original approval as a resource home:

1. Twenty-four (24) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet; or

2. Sixteen (16) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet, if the resource home parent holds a current certificate in CPR and first aid [before the anniversary date of approval as a specialized medically-fragile home]; and

(b) Continues to meet the requirements of this section.

(5) Professional experience related to the care of a specialized medically-fragile child may substitute for the training requirement specified in subsection (1)(d) of this section, upon the approval of designated [regional] cabinet staff if the resource home parent is a:

(a) Health professional;

(b) Registered nurse as defined by [in] KRS 314.011(5); or

(c) Licensed practical nurse as defined by [in] KRS 314.011(9).

(6) An approved specialized medically-fragile resource home parent shall cooperate with the cabinet in carrying out the child's health plan.

Section 9. Preparation and Selection of a Resource Home Parent. (1) The cabinet shall recruit a resource home and approve the resource home prior to the placement of a child.

(2) A resource home applicant shall complete a:

(a) Minimum of thirty (30) hours of initial family preparation; and

(b) Curriculum approved by designated cabinet staff, including the following topics:

1. Orientation to the cabinet's resource home program;

2. An example of an actual experience from a resource home parent that has fostered a child; and

3. Information regarding:

- a. The stages of grief;
- b. Identification of the behavior linked to each stage;
- c. The long-term effect of separation and loss on a child;
- d. Permanency planning for a child, including independent living services;
- e. The importance of attachment on the growth and development and how a child may maintain or develop a healthy attachment;
- f. Family functioning, values, and expectations of a foster home;
- g. Cultural competency;
- h. How a child comes into the care and custody of the cabinet, and the importance of achieving permanency;
- i. Types of maltreatment and experiences in foster care and adoption;
- j. The importance of birth family and culture and helping children leave foster care; and
- k. Identification of changes that may occur in the home if a placement occurs, to include:
  - (i) Family adjustment and disruption;
  - (ii) Identity issues;
  - (iii) Discipline issues and child behavior management; and
  - (iv) Specific requirements and responsibilities of a resource home parent.
- (3) Except for a cabinet-approved individualized preparation program, family preparation for placement of a child under the custodial control of the cabinet shall be completed in a group setting by each adult who resides in the household and provides care.
- (4) If a new adult moves into an approved resource home where a child is already placed by the cabinet, the child may remain and additional children may be placed, if the new adult:
  - (a) Completes training in accordance with subsection (2) of this section within six (6) months of entering the home; and
  - (b) Meets the requirements specified in Sections 3 and 4 of this administrative regulation.
- (5) An adult child or elderly person who resides in the resource home shall not be required to complete family preparation if that individual shall not be responsible for routine daily care of a child placed in the home by the cabinet.
- (6) The cabinet shall not be obligated to grant resource home approval or placement of a specific child to an individual or family that completes family preparation.
- (7) The purpose of family preparation shall be to:
  - (a) Orient the applicant to the philosophy and process of the cabinet's family foster care or adoption programs;
  - (b) Develop greater self-awareness on the part of the applicant to determine strengths and needs;
  - (c) Sensitize the applicant to the kinds of situations, feelings, and reactions that are apt to occur with a child in the custody of the cabinet; and
  - (d) Effect behavior so that an applicant may better fulfill the role as a resource home parent of a child.
- (8) The family preparation process shall emphasize:
  - (a) Self-evaluation;
  - (b) Participation in small group exercises; and
  - (c) Discussion with experienced resource home parents.
- (9) In addition to completion of the family preparation curriculum, at least two (2) family consultations shall be conducted by cabinet staff in the home of an applicant, to include:
  - (a) Documentation that the requirements in Sections 3 and 4 of this administrative regulation have been met;
  - (b) Documentation that a personal interview with each member of the applicant's household has been completed;
  - (c) Discussion of the attitude of each member of the applicant's household toward placement of a child;
  - (d) Observation of the functioning of the applicant's household, including interpersonal relationships and patterns of interaction; and
  - (e) Assurance that the applicant is willing to accept a child's relationship with the child's family of origin.
- (10) An applicant approved as a foster or adoptive parent or respite care provider by another state, or by a child-placing agency as described by [in] KRS 199.011(7) shall:
  - (a) Be assessed by cabinet staff to ascertain the applicant's

level of skill as a potential Kentucky resource home parent;

(b) Provide verification of the closure and a statement to indicate whether the closure was at the request of the resource home parent, the other state, or the agency; and

(c) Not be required to complete the family preparation process for approval as a Kentucky resource home parent if cabinet staff:

- 1. Determine that the applicant possesses the necessary skills for fostering; and
- 2. Obtain records and recommendation from the other state or child-placing agency.

(11) If cabinet staff determines that an applicant described in subsection (4) or (10) of this section lacks the necessary [foster parent] skills to become a resources home parent, an individualized preparation curriculum shall be developed to fulfill unmet training needs.

(12)(a) A resource home parent shall request the recommendation of cabinet staff prior to enrolling in training specified in Section 5(1)(c), 6(1)(d), 7(1)(d)(e), or 8(1)(d) of this administrative regulation; and

(b) Cabinet staff may recommend the resource home parent to receive training specified in Section 5(1)(c), 6(1)(d), 7(1)(d)(e), or 8(1)(d) of this administrative regulation if the resource home parent possesses the aptitude to care for a child described in Section:

- 1. ~~[Child described in]~~ Section 5(1)(b) of this administrative regulation;
- 2. 6(1)(b) of this administrative regulation [Medically-fragile child];
- 3. ~~[Child described in Section]~~ 7(1)(b) of this administrative regulation; or
- 4. 8(1)(b) of this administrative regulation [Specialized-medically-fragile-child].

Section 10. Completion of the Resource Home Approval Process. (1) Designated [regional] cabinet staff in a supervisory role may approve a resource home applicant if:

- (a) The applicant provides written and signed information pertaining to family history and background;
  - (b) The applicant completes family preparation as required by Section 9(2) of this administrative regulation;
  - (c) The information required in Section 3(8) through (10) and (13) through (17) of this administrative regulation has been obtained;
  - (d) Designated [regional] cabinet staff recommends approval; and
  - (e) The applicant's ability to provide a foster, adoptive, or respite care service is consistent with the:
    - 1. Cabinet's minimum resource home requirements; and
    - 2. Needs of the families and children served by the cabinet.
- (2) If the designated [regional] cabinet staff determines that an applicant does not meet the minimum requirements for approval as a resource home parent, the cabinet shall recommend that the applicant withdraw the request.

Section 11. Denial of a Resource Home Request. (1) Designated [regional] cabinet staff shall notify an applicant, in writing, if the request to become a resource home parent is not recommended for one (1) of the following reasons:

- (a) The applicant is unwilling to withdraw the request to become a resource home parent after receiving a recommendation to withdraw; or
  - (b) The applicant desires to adopt, but is unwilling to adopt a child under the custodial control of the cabinet.
- (2) If the resource home applicant disagrees with the cabinet's recommendation to not accept the applicant as a resource home, designated [regional] cabinet staff shall review the request to become a resource home parent and issue a final written determination regarding the cabinet's recommendation.

Section 12. Expectations of Resource Homes Providing Foster Care Services. A resource home parent providing foster care services shall:

- (1) Provide a child placed by the cabinet with a family life, including:
  - (a) Nutritious food;



- (b) Clothing comparable in quality and variety to that worn by other children with whom the child may associate;
- (c) Affection;
- (d) Training;
- (e) Recreational opportunities;
- (f) Educational opportunities;
- (g) Nonmedical transportation;
- (h) Independent living services, for a child age twelve (12) and older; and
- (i) Opportunities for development consistent with their religious, ethnic and cultural heritage;
- (2) Permit cabinet staff to visit;
- (3) Share with cabinet staff pertinent information about a child placed by the cabinet;
- (4) Comply with the general supervision and direction of the cabinet concerning the care of a child placed by the cabinet;
- (5) Report immediately to the cabinet if there is a:
  - (a) Change of address;
  - (b) Medical condition, accident or death of a child placed by the cabinet;
  - (c) Change in the number of people living in the home;
  - (d) Significant change in circumstances in the resource [foster] home;
  - (e) An absence without official leave;
  - (f) A suicide attempt; or
  - (g) Criminal activity by the child requiring notification of law enforcement.
- (6) Notify the cabinet if:
  - (a) Leaving the state with a child placed by the cabinet for more than two (2) nights; or
  - (b) A child placed by the cabinet is to be absent from the resource [foster] home for more than three (3) days;
- (7) Cooperate with the cabinet when a contact is arranged by cabinet staff between a child placed by the cabinet and the child's birth family including:
  - (a) Visits;
  - (b) Telephone calls; or
  - (c) Mail;
- (8) Surrender a child [or children] to the authorized representative of the cabinet upon request;
- (9) Keep confidential all personal or protected health information as shared by the cabinet, in accordance with KRS 194A.060, 620.050 and 45 C.F.R. Parts 160 and 164, concerning a child placed by the cabinet or the child's birth family;
- (10) Support an assessment of the service needs of a child placed by the cabinet;
- (11) Participate in case-planning conferences concerning a child placed by the cabinet;
- (12) Cooperate with the implementation of the permanency goal established for a child placed by the cabinet;
- (13) Notify the cabinet at least ten (10) calendar days in advance of the home becoming certified to provide foster care or adoption services through a private child-placing agency in accordance with 922 KAR 1:310;
- (14) Treat a child placed by the cabinet with dignity;
- (15) Arrange for respite care services in accordance with Section 13(5) of this administrative regulation;
- (16) Ensure that a child in the custody of the cabinet receives the child's designated per diem allowance;
- (17) Facilitate the delivery of medical care to a child placed by the cabinet as needed, including:
  - (a) Administration of medication to the child and daily documentation of the medication's administration; and
  - (b) Annual physicals and examinations for the child; and
- (18) Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030.

Section 13. Reimbursements for Resource Homes Providing Foster Care Services. (1) Types of per diem reimbursement. The cabinet shall approve a resource home as specified in Sections 3 and 4 of this administrative regulation and authorize a per diem reimbursement as follows:

- (a) A basic per diem reimbursement shall be:
  - 1. Based on the age of a child placed by the cabinet in the

resource home; and

- 2. Made to the resource home parent that:
  - a. Does not meet criteria specified in paragraphs (b) through (j) of this subsection; and
  - b. Meets annual training required in Section 15(1)(a) of this administrative regulation.
- (b) An advanced per diem reimbursement shall be:
  - 1. Made to a resource home who:
    - a. Has completed twenty-four (24) hours of advanced training, including training on child sexual abuse, beyond the family preparation, specified in Section 9(2) of this administrative regulation; and
    - b. Completes twelve (12) hours of ongoing cabinet-sponsored training or cabinet-approved training each year; and
  - 2. Based on the age of the child placed by the cabinet in the resource home.
- (c) An emergency shelter per diem reimbursement shall:
  - 1. Be made to a resource home parent who:
    - a. Meets criteria specified in Section 5 of this administrative regulation; and
    - b. Cares for a child, described in Section 5(1)(b) of this administrative regulation, who is placed by the cabinet; and
  - 2. a. Be reimbursed for no more than fourteen (14) days, unless an extension is granted in accordance with Section 5(1)(b)2 of this administrative regulation; or
  - b. After fourteen (14) days revert to:
    - (i) A basic per diem reimbursement, described in paragraph (a) of this subsection; or
    - (ii) An advanced per diem reimbursement, if the resource home foster parent meets training requirements specified in paragraph (b)1a and b of this subsection.
- (d) A basic medically-fragile per diem reimbursement shall be made to a resource home parent who:
  - 1. Meets criteria specified in Section 6 of this administrative regulation; and
  - 2. Provides for the care of a medically-fragile child.
- (e) An advanced medically-fragile per diem reimbursement shall be made to a resource home parent who:
  - 1. Meets criteria specified in Section 6 of this administrative regulation;
  - 2. Maintains a current license as a licensed practical nurse in accordance with KRS 314.011(9); and
  - 3. Provides for the care of a medically-fragile child.
- (f) A degreed medically-fragile per diem reimbursement shall be made to a resource home parent who:
  - 1. Meets criteria specified in Section 6 of this administrative regulation; and
  - 2. Maintains a current license as a:
    - a. Registered nurse in accordance with KRS 314.011(5); or
    - b. Health professional; and
  - 3. Provides for the care of a medically-fragile child.
- (g) A basic care plus resource home per diem reimbursement shall be made to a resource home parent who:
  - 1. Meets criteria specified in Section 7 of this administrative regulation; and
  - 2. Provides for the care of a child described in Section 7(1)(b) of this administrative regulation.
- (h) An advanced care plus resource home per diem reimbursement shall be made to a resource [foster] home parent who:
  - 1. Meets criteria specified in Section 7 of this administrative regulation;
  - 2. ~~[Completes ongoing cabinet-sponsored or cabinet-approved training as specified in Section 9(2) of this administrative regulation;~~
  - 3. Has one (1) year of experience as a care plus resource home; and
  - 3.4. Provides for the care of a child described in Section 7(1)(b) of this administrative regulation.
- (i) An advanced specialized medically-fragile per diem reimbursement shall be made to a resource home parent who:
  - 1. Meets criteria specified in Section 8 of this administrative regulation; and
  - 2. Maintains a current license as a licensed practical nurse in accordance with KRS 314.011(9); and

3. Provides for the care of a specialized medically-fragile child.  
(j) A degreed specialized medically-fragile per diem reimbursement shall be made to a resource home parent who:

1. Maintains a current license as a:
  - a. Licensed registered nurse in accordance with KRS 314.011(5); or
  - b. Physician in accordance with KRS 311.720(9); and
2. Meets criteria specified in Section 8 of this administrative regulation; and

3. Provides for the care of a specialized medically-fragile child.  
(k) Upon placement of a child by the cabinet, a per diem reimbursement shall:

1. Be specified in a contract between an approved resource foster home and the cabinet; and
2. Provide for the care of a child placed by the cabinet, to include:

- a. Housing expenses;
- b. Food-related expenses;
- c. Nonmedical transportation;
- d. Clothing;
- e. Allowance;
- f. Incidentals;
- g. Babysitting, excluding childcare authorized in subsection (4)(b) of this section;
- h. Sports, recreation and school activities;
- i. One (1) day of respite care per child per month; and
- j. School expenses.

(2) Medical coverage.  
(a) Cabinet staff may authorize payment for medical expenses for a child in the custody of the cabinet after verification is provided that the child is not covered by health insurance, Medicaid or the Kentucky Children's Health Insurance Program ("K-CHIP").

(b) Designated [regional] cabinet staff shall approve authorization of payment for a medical treatment greater than \$500.

(3) Child care services.  
(a) The cabinet shall review requests for child care services every six (6) months for a working resource home parent who provides foster care services.

(b) Designated [regional] cabinet staff may approve requests for child care services for a nonworking resource home parent who provides foster care services:

1. If a medical crisis affects the resource home parent; or
2. To allow for an adjustment period for the child.

(c) Designated [regional] cabinet staff shall review approved requests for child care services for a nonworking resource home parent every three (3) months.

(4) Training. To the extent funds are available and in accordance with Section 15(4) of this administrative regulation, the cabinet shall provide a reimbursement to an approved resource home that provides foster care services for ongoing training expenses commensurate with the resource home parent's training needs, including:

- (a) Mileage;
- (b) Babysitting; and
- (c) Tuition or fees.

(5) Respite care.  
(a) Except for a child in an emergency shelter resource home, respite care is available for a child placed by the cabinet in a resource home that provides foster care services.

(b) A resource home that provides foster care services shall be eligible for one (1) day of respite care per month per child.

(c) A resource home that cares for a child in the custody of the cabinet and meets criteria established in Sections 6 through 8 of this administrative regulation shall be eligible for three (3) days of respite care per month per child.

(d) Designated [regional] cabinet staff may extend respite care up to fourteen (14) days, if designated [regional] cabinet staff document that the:

1. Resource home parent requires the additional respite care:
  - a. To stabilize the child's placement in the resource home that provides foster care services; or
  - b. Due to unforeseen circumstances that may occur, such as:
    - (i) Death in the family;
    - (ii) Surgery; or

(iii) Illness; or

2. Child placed in the resource home requires additional respite care to allow for a period of adjustment.

(e) The cost of respite care shall not exceed the per diem for the child.

(f) A respite care provider shall be approved in accordance with Section 21 of this administrative regulation.

(6) Appeals. A resource home parent may appeal the timeliness of reimbursement in accordance with 922 KAR 1:320.

Section 14. Home Study Requests. (1) Upon receipt of a request from another state's Interstate Compact on the Placement of Children Administrator in the interest of a child in the legal custody of that state's public agency, the cabinet shall complete a home study as specified in 922 KAR 1:100, Section 6(6).

(2) The cabinet shall share a previously approved home study in accordance with the Kentucky Open Records Act, KRS 61.870-61.884 and 42 U.S.C. 671(a)(23).

(3) An individual may request an administrative hearing in accordance with 922 KAR 1:320 for failure of the cabinet to act in accordance with subsections (1) and (2) of this section.

Section 15. Annual Resource Home Training Requirement. (1) Before the anniversary date of the original approval as a resource home, (a) A resource home parent shall be required to complete;

(a) [before the anniversary date of approval] at least six (6) hours of annual cabinet-sponsored training or training approved in advance by the cabinet; and

(b) Training necessary to obtain certifications required by Sections 6(1)(f) and 8(1)(f) of this administrative regulation shall count towards the annual training requirement.

(2) An individualized curriculum may be developed for a resource home parent who is unable to participate in annual group training because of employment or other circumstances.

(3)(a) Except for a resource home parent with whom a child has developed a significant emotional attachment and is approved by designated [regional] cabinet staff, the resource home whose parent fails to meet the annual training requirement shall be closed.

(b) Additional children shall not be placed in the home until the training requirement has been satisfactorily met.

(4) To the extent that funds are available, designated [regional] cabinet staff shall approve reimbursement for, to the extent that funds are available, for the following expenses of a resource home parent who has a child placed in their home under the custody and control of the cabinet and is participating in ongoing cabinet-sponsored or cabinet-approved training for the following expenses:

- (a) Mileage;
- (b) Babysitting; and
- (c) Tuition or fees up to the amount of \$100 per family per year or \$200 per year for a:

1. Medically-fragile resource home;
2. Specialized medically-fragile resource home; or
3. Care plus resource home.

(5) Training hours required by Sections 6(6)(a), 7(3)(a), and 8(4)(a) of this administrative regulation may be used by the cabinet to reapprove the resource home for more than one (1) type of resource home.

Section 16. Resource Home Annual Reevaluation. (1) A cabinet staff member shall conduct a personal, in-home interview with a resource home parent before [during] the anniversary date of the original [month-of-initial] approval as a resource home. The interviewer shall assess:

- (a) Any change in the resource home;
- (b) The ability of the resource home parent to meet the needs of a child placed in the home; and
- (c) Continuing compliance with the requirements of Sections 3 and 4 of this administrative regulation.

(2) The interviewer shall complete a DPP-1289, Annual Strengths/Needs Assessment for Resource [Home] Families during the interview.

Section 17. Resource Home Reviews. (1) Upon notification of

a factor that may place unusual stress on the resource home or create a situation that may place a child at risk, cabinet staff shall:

(a) Immediately assess the health and safety risk of the child; and

(b) Complete a review of the resource home within thirty (30) calendar days

(2) Factors that shall result in a review of a resource home shall include:

(a) Death or disability of a family member;

(b) Sudden onset of a health condition that would impair a resource home parent's ability to care for a child placed in the home by the cabinet;

(c) Change in marital status;

(d) Sudden, substantial decrease in, or loss of, income;

(e) Childbirth;

(f) Use of a form of punishment that includes

1. Cruel, severe, or humiliating actions;

2. Corporal punishment inflicted in any manner;

3. Denial of food, clothing, or shelter;

4. Withholding implementation of the child's treatment plan;

5. Denial of visits, telephone or mail contacts with family members, unless authorized by a court of competent jurisdiction; and

6. Assignment of extremely strenuous exercise or work;

(g) A report of abuse, neglect, or dependency that results in a finding that:

1. Is substantiated; or

2. Reveals concern relating to the health, safety, and well-being of the child;

(h) If the resource home parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense; or

(i) Other factor identified by cabinet staff that jeopardizes the physical, mental, or emotional well-being of the child.

(3) The narrative of the review shall contain:

(a) Identifying information;

(b) Current composition of the household;

(c) Description of the situation that initiated the review;

(d) An evaluation of the resource home's family functioning to determine if the child's needs are met; and

(e) A plan for corrective action that may include a recommendation for closure of the resource home.

Section 18. Closure of an Approved Resource Home. (1) A resource home shall be closed if:

(a) Cabinet staff determines that the family does not meet the general requirements, as specified in Sections 3 and 4 of this administrative regulation, for a resource home;

(b) A situation exists that is not in the best interest of a child;

(c) Sexual abuse or exploitation by the resource home parent or by another resident of the resource home is substantiated;

(d) Substantiated child maltreatment of a child by a resident of the household occurs that is serious in nature or warrants removal of a child;

(e) A serious physical or mental illness develops that may impair or preclude adequate care of the child by the resource home parent; or

(f) The cabinet has not placed a child in the home within the preceding two (2) year period.

(2) A resource home may be closed according to the terms of the contract between the cabinet and the resource home.

(3) If it is necessary to close an approved resource home, the reason shall be stated by cabinet staff in a personal interview with the family.

(4) The cabinet shall confirm, in a written notice to the resource home parent, the decision to close a home. The notice shall be delivered within thirty (30) calendar days of the interview with a resource home parent.

(5) The written notice for closure of a resource home shall include:

(a) Notice that the cabinet shall not place a child in the home; and

(b) The reason why the resource home is being closed.

Section 19. Reapplication. (1) A former resource home parent

whose home was closed pursuant to Section 18(1)(a) through (f) of this administrative regulation may be considered for reapproval if the cause of closure has been resolved.

(2) To reapply, a former resource home parent shall:

(a) Attend an informational meeting; and

(b) Submit the:

1. Names of references specified in Section 3(13) of this administrative regulation; and

2. Authorization for criminal records release specified in Section 3(17) of this administrative regulation.

(3) A reapplying former resource home parent shall reenroll and complete family preparation, as specified in Section 9 of this administrative regulation, unless the former resource home parent:

(a) Has previously completed family preparation, as specified in Section 9(2) of this administrative regulation; and

(b) Is considered a placement resource for children.

(4) An adoptive family may be reconsidered for adoptive placement pursuant to 922 KAR 1:100, Section 9.

Section 20. Resource Home Parent Adoption. (1) A resource home parent may adopt a child for whom parental rights have been terminated if:

(a) Resource home parent adoption is determined by cabinet staff to be in the best interest of the child;

(b) The child resides in the resource home; and

(c) Criteria in 922 KAR 1:100 are met.

(2) If a resource home parent expresses interest in adopting a foster child currently placed in the home and an alternative permanent placement is in the child's best interest, cabinet staff shall meet with the resource home parent prior to selection of an adoptive home to explain:

(a) Why an alternative permanent placement is in the child's best interest; and

(b) The resource home parent's right to submit a request to the cabinet to reconsider the recommendation.

(3) If a resource home parent is not approved for adoptive placement of a child currently placed in the home, cabinet staff shall meet with the resource home parent to explain the reason that the resource home parent adoption is not in the best interest of the foster child.

Section 21. Requirements for Respite Care Providers. (1) A respite care provider shall:

(a) Be

1. An approved resource home; or

2. Approved in accordance with subsection (2) of this section; and

(b) Receive preparation for placement of a child, including information in accordance with:

1. KRS 605.090(1)(b); and

2.a. Section 6(1)(e) through (g) of this administrative regulation, if the child is a medically-fragile child; or

b. Section 8(1)(e) through (g) of this administrative regulation, if the child is a specialized medically-fragile child

(2) If a resource home parent chooses a respite care provider who is not an approved resource home, the respite care provider shall:

(a)1. Meet criteria established in Sections 3(1), (2), (17), (18) and 4 of this administrative regulation if respite care is provided outside the home of the resource home parent; or

2. Meet criteria established in Section 3(1), (2), (17), and (18) of this administrative regulation if respite care is provided inside the home of the resource home parent; and

(b)1. If providing respite care for a child described in Section 7(1)(b) of this administrative regulation, have:

a. Professional experience or training in the mental health treatment of children or their families; or

b. A certificate of completion for twenty-four (24) hours of care plus training provided by the cabinet or approved in advance by the cabinet;

2. If providing respite care for a medically-fragile child:

a.(i) Meet training requirements specified in Section 6 of this administrative regulation; or

(ii) Be a health professional, and

b. Undergo health screenings as specified in Section 3(8) and (9) of this administrative regulation; or

3. If providing respite care for a specialized medically-fragile child:

a. Be a health professional; and

b. Undergo health screenings as specified in Section 3(8) and (9) of this administrative regulation.

(3) A respite care provider:

(a) May attend family preparation as specified in Section 9 of this administrative regulation; [and]

(b) May receive training to meet the specific needs of a medically-fragile child from a health professional or a resource home parent trained by a health professional in how to care for a specific medically-fragile child; and

(c) Shall comply with Section 2 of this administrative regulation.

Section 22. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-107, Health Information Required for Resource Home Applicants or Adult Household Members, edition 02/08[6/06]";

(b) "DPP-108, Health Information Required for Resource Home Applicants Regarding Dependent Children, edition 02/08[6/06]";

(c) "DPP-112A, Placement Exception Request, edition 02/08[6/06]";

(d) "DPP-112B, Placement [Resource Home] Exception Plan, edition 02/08[6/06]";

(e) "DPP-1289, Annual Strengths/Needs Assessment for Resource [Home] Families, edition 6/06".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK A. WASHINGTON, Commissioner

TOM EMBERTON, JR., Acting Secretary

APPROVED BY AGENCY: December 10, 2007

FILED WITH LRC: December 12, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008 at 9 a.m. in the Health Services Board Room, on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person Justin Deannger, DCBS Regulation Coordinator

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes the process of determining an applicant's capacity for foster and adoptive parenthood and the requirements for resource homes and respite care providers caring for foster or adoptive children.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide standards for resource homes and respite care providers who care for foster or adoptive children.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms

to KRS 605.100(1) by providing for the specialized treatment of children according to their respective problems, needs and characteristics and, to KRS 199.4172, by establishing the process of determining an applicant's capacity for foster or adoptive parenthood.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the criteria for foster and adoptive homes and respite care providers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will align health screening requirements with recommendations from the U.S. Center for Disease Control and Kentucky Department of Public Health. In addition, training requirements of medically-fragile and specialized medically-fragile resource homes were altered to: (1) ensure CPR and first aid certification count towards the resource home parents' initial and ongoing training requirements, and (2) allow for alternate trainers in the training of a child's specific care needs. Other technical corrections were made to provide clarity in compliance with KRS Chapter 13A requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation was necessary to ensure health screening criteria of resource home parents are consistent with recommendations from the U.S. Center for Disease Control and Kentucky Department of Public Health. In addition, the amendment modifies training requirements to facilitate safe and timely placement of a child, and assist in the recruitment and retention of resource home parents and respite care providers. Other corrections were required to provide clarity and ensure compliance with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its clarification and enhancement of existing criteria for publicly approved foster/adoptive parents (i.e., resource homes) and respite care providers.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes through modification of existing criteria for publicly approved foster/adoptive parents (i.e., resource homes) and respite care providers to ensure clarity and reduce any burdens that may negatively impact a child's placement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet currently has 4,170 foster and adoptive parents. The changes to this administrative regulation will affect applicants for foster or adoptive homes and respite care providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment will facilitate the safe and timely placement of children and assist in the recruitment and retention of resource homes and respite care providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will realize no increase in cost as a result of this regulatory amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities should benefit through a relaxation of health screening requirements so that they are consistent with recommendations from the U.S. Center for Disease Control and Kentucky Department of Public Health. In addition, they will benefit from the clarification provided and the modification of training requirements to allow for alternate trainers in an effort to facilitate safe and timely placement of a child in care. The regulated entities or their representative have been engaged in the amendment process to promote their understanding and support.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation

- (a) Initially: None  
(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-E and state general funds are used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be an increase in fees or funding due to the changes in this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees are established either directly or indirectly in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering will not be applied as this administrative regulation will be implemented statewide and will affect all foster and adoptive parent and respite care provider applicants.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671
2. State compliance standards. KRS 194A.050(1), 199.472, 605.100(1)
3. Minimum or uniform standards contained in the federal mandate 42 U.S.C. 671
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose a stricter, additional or different requirement, or responsibility from the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472, 605.100, 42 U.S.C. 671
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new state or local revenues.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new state or local revenues.
  - (c) How much will it cost to administer this program for the first year? There are no new initial costs to administer this program.
  - (d) How much will it cost to administer this program for subsequent years? There will be no new ongoing costs to administer this program.

Note. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation

Revenues (+/-)  
Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

#### 922 KAR 1:470. Central registry.

RELATES TO: KRS 17.165(5), 61.876, 199.896(19), 199.898(1)(a), 600.020(1), (54), (55), Chapter 625, 42 U.S.C. 671(a)(20), 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 605.130(4), 605.150, 2006 Ky. Acts ch. 252 Part 1, H.10(3) [2006 Ky. Acts ch. 173 Part 1, H.10.]

NECESSITY, FUNCTION, and CONFORMITY: 194A.050(1) requires [authorizes] the secretary to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The cabinet is required to maintain records for the purpose of conducting child abuse or neglect checks mandated by law. KRS 605.150 permits the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(4), which authorizes the cabinet to perform services necessary for the protection of children. 2006 Ky. Acts ch. 252 Part 1, H.10(3) [2006 Ky. Acts ch. 173 Part 1, H.10.] authorizes the secretary to promulgate administrative regulations necessary to prescribe criminal background investigation fee amounts. This administrative regulation establishes the procedure by which the cabinet shall conduct a child abuse or neglect check using information in the central registry.

Section 1. Definitions. (1) "Abused or neglected child" is defined by [in] KRS 600.020(1).

(2) "Sexual abuse" is defined by [in] KRS 600.020(54).

(3) "Sexual exploitation" is defined by [in] KRS 600.020(55).

Section 2. Central Registry. (1) The central registry shall include the name of each individual:

(a) Who has been found by the cabinet to have abused or neglected a child on or after October 1, 1998; and

(b)1. Who waived the right to appeal a substantiated finding of child abuse or neglect in accordance with:

- a. 922 KAR 1:480,
- b. 922 KAR 1:320; or
- c. 922 KAR 1:330, Section 9, or
2. Whose substantiated incident was upheld upon appeal.

(2) Each name shall:

- (a) Remain on the central registry for a period of at least seven (7) years; and
- (b) Be removed from the central registry after a period of seven (7) years if:

1. No additional incident of child abuse or neglect has been substantiated by the cabinet since the time of the incident for which the individual's name was placed on the registry; and

2. Cabinet records indicate that the incident for which the individual's name was placed on the registry did not relate to:

- a. Sexual abuse or sexual exploitation of a child;
- b. A child fatality related to abuse or neglect;
- c. A criminal conviction related to child abuse or neglect;
- d. A civil judicial determination related to child abuse or neglect; or

e. Involuntary termination of parental rights in accordance with KRS 625.050 through 625.120 [Chapter 625]

(3) This administrative regulation shall not apply to cabinet background checks required by 922 KAR 1:490, regarding foster or adoptive services.

(4) This administrative regulation shall not limit the cabinet's ability to disclose information in accordance with 42 U.S.C. 5106a(b)(2)(A)(viii), (ix), and (x)

#### Section 3. Procedure for Requesting a Central Registry Check.

(1) If information from the central registry is required by law, a request for a central registry check may be made by an.

- (a) Individual;
- (b) Organization; or
- (c) Other entity.

(2) The cabinet shall conduct a check of the central registry for each individual who:

- (a) Submits a request for a check of the central registry in accordance with subsection (4) of this section, and
  - (b) 1. Applies for initial licensure;
  - 2. Is hired by, or volunteers with an entity required by law to obtain information contained in the central registry; or
  - 3. Is hired by, or volunteers with, an entity that may require a central registry check as a condition for working with children on a regular basis.

(3) An individual who is not required by law to obtain information contained in the central registry shall submit an open records request in accordance with 922 KAR 1:510.

(4) A request for a central registry check shall be made by submitting to the cabinet.

(a) A completed form, "[DPP-156, Central Registry Check]", no later than [within] five (5) working days after:

- 1. The date of employment of an individual required by law to submit to a central registry check; or
- 2. A volunteer's first day, if the volunteer is required by law to submit to a central registry check; and
- (b) A nonrefundable fee of ten (10) dollars:
  - 1.a. Submitted by check or money order; and
  - b. Made payable to the Kentucky State Treasurer; or
  - 2. Made available through a prepaid account established with the cabinet.

(5) A state requesting a child abuse or neglect check from Kentucky as required by 42 U.S.C. 671(a)(20) shall follow the procedures described in 922 KAR 1:490, Section 4.

Section 4. Incorporation by Reference. (1) "DPP-156, Central Registry Check," edition 02/08 [42/06], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK A. WASHINGTON, Commissioner  
TOM EMBERTON, JR., Acting Secretary

APPROVED BY AGENCY: December 10, 2007

FILED WITH LRC: December 12, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008 at 9 a.m. in the Health Services Board Room, on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure by which the general public requests and the cabinet conducts a child abuse or neglect

check. This administrative regulation specifies the requirements of using the central registry.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The cabinet is required to maintain records for the purpose of conducting child abuse or neglect checks mandated by federal and state law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes through its establishment of a central registry for the purpose of child abuse and neglect checks conducted by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the procedure by which the Cabinet shall conduct a child abuse or neglect check using information from the central registry.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Pub.L. 109-248, The Adam Walsh Child Protection and Safety Act of 2006, made changes to Title IV-E of the Social Security Act that include new state requirements regarding the approval of prospective foster/adoptive homes. If an applicant has lived in another state within the previous five years, the approving state agency must ensure the applicant submits to a child abuse and neglect check(s) conducted by the previous state(s) of residence. This amendment clarifies Kentucky's child abuse and neglect check processes for other states, amends incorporated materials, and makes technical corrections to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure compliance and avoid federal financial penalty to Kentucky's Title IV-E funding or a percentage of \$81 million federal dollars provided to Kentucky's foster and adoptive programs and their proper administration.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statute by clarifying the central registry and related processes used by the cabinet to conduct child abuse and neglect checks.

(d) How the amendment will assist in the effective administration of the statutes. The amendment to the administrative regulation will assist in the effective administration of the statute by enhancing clarity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Three units within the cabinet conduct central registry checks. The following are monthly averages conducted by each:

- Office of Inspector General 300,
- Department for Community Based Services (DCBS)-Division of Child Care 2617, and
- DCBS-Division of Staff Resource Development 1338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment offers additional clarity to individuals mandated to submit to a child abuse and neglect check and updates related materials. In addition, the amendment offers clarification to other state agencies who may request from the cabinet a child abuse and neglect check concerning a foster/adoptive parent applicant. The amendment does not drastically impact affected entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs to the affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will benefit from the changes to this administrative regulation by understanding the



process to request a child abuse or neglect check from Kentucky's central registry.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

- (a) Initially: No additional funding is required.
- (b) On a continuing basis: No additional funding is required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the central registry is from the State General Funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There will be no increase in fees or funding to implement this regulatory amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes a \$10 fee for central registry checks in accordance with 2006 Ky. Acts ch. 252 Part 1, H.10(3).

(9) TIERING: Is tiering applied? Tiering will not be applied, as this administrative regulation will be implemented statewide in the same manner.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 671(a)(20) and 5106a
2. State compliance standards. KRS 194A.050(1), 605.130(4), 605.150, 2006 Ky. Acts. ch. 252 PART 1, H.10(3).
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671(a)(20)
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? None
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
  2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services and other states' child welfare agencies will be impacted by this administrative regulation. Agencies mandated to submit employees to a check of the central registry may also include quasi-governmental and governmental units and school districts.
  3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.130(4), 605.150, 2006 Ky. Acts ch. 252 Part 1, H.10(3), 42 U.S.C. 671(a)(20).
  4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
    - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new state or local revenues.
    - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new state or local revenues.
    - (c) How much will it cost to administer this program for the first year? There are no new initial costs to administer this program.
    - (d) How much will it cost to administer this program for subsequent years? There will be no new ongoing costs to administer this program.
- Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative

regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

**922 KAR 1:490. Background checks for foster and adoptive parents, caretaker relatives, and reporting requirements.**

RELATES TO: KRS 199.011(7), 600.020(54), (55), 605.090(1)(b), (6), 605.120, 605.130, [605.160,] Chapter 625, 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20)(A)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.462(4), [499.472(4),] 199.640(5), [and] 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its program. KRS 199.462(4) requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a [each] foster or adoptive parent applicant, an [and each] adult member of the applicant's household, and a caretaker relative. [KRS 199.472(1) requires the cabinet to establish criteria to be followed for the adoption of children.] KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including:

- (1) KRS 605.120 by which the cabinet is authorized to establish a program for kinship care; and
- (2) [the provision of] KRS 605.130(4) by which the cabinet shall perform such other services as may be deemed necessary for the protection of children. KRS 199.640(5) authorizes the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-placing agencies relating to the health and safety of all children in the care of the agency. This administrative regulation establishes background check requirements for caretaker relatives or applicants seeking to provide foster or adoptive services. Additionally, this administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that [the applicant or] a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

Section 1. Definitions. (1) "Adolescent member of the household" means a youth who:

- (a) Resides in the home of an individual who applies for approval or has been approved to provide foster or adoptive services;
  - (b) Is age twelve (12) through age seventeen (17); and
  - (c) Is not placed in the home by a state agency.
- (2) "Adult member of the household" means an adult who:
- (a) Resides in the home of an individual who applies for approval or has been approved to provide foster or adoptive services; and
  - (b) Is eighteen (18) years of age or older.
- (3) "Applicant" means an individual who applies for approval as a foster or adoptive parent under:
- (a) 922 KAR 1:350, Family Preparation; or
  - (b) 922 KAR 1:310, Standards for Child-Placing Agencies.
- (4) "Caretaker relative" is a prospective kinship caregiver as defined in 922 KAR 1:130.
- (5) "Child-placing agency" is defined by [at] KRS 199.011(7).

(6) [(5)] "Sexual abuse" is defined by [at] KRS 600.020(54)  
 (7) [(6)] "Sexual exploitation" is defined by [at] KRS 600.020(55).

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants [Parents]. (1) An applicant, and each adult member of the household, shall submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or
2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years; and

(c) A criminal records check conducted by means of a fingerprint check of [by] the National Crime Information Database [Kentucky State Police and the Federal Bureau of Investigation, if the applicant:

1. Or adult household member has resided out of state within the ten (10) year period prior to the date of application; and
2. Offers a placement to a child made available through the cabinet or its agent].

(2) Prior to approval of an applicant, each adolescent member of the household shall submit to a child abuse or neglect check conducted by the cabinet.

(3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or [and] adult member of the household who has been found by the cabinet to have:

- (a) Committed sexual abuse or sexual exploitation of a child;
  - (b) Been responsible for a child fatality related to abuse or neglect;
  - (c) Abused or neglected a child within the seven (7) year period immediately prior to the application; or
  - (d) Had parental rights terminated [involuntarily].
- (4) An applicant shall not be approved if:
- (a) A criminal records check reveals that the applicant, or adult member of the household, has [been convicted of] a:
    1. Felony conviction involving:
      - a. A spouse, a child, sexual violence, or death as described by 42 U.S.C. 671(a)(20)[(A)]; or
      - b. Physical abuse, battery, a [2-] drug, or alcohol[related felony] within the five (5) year period prior to application;
    2. Criminal conviction relating to child abuse or neglect; or
    3. Civil judicial determination related to child abuse or neglect [for approval as a foster or adoptive parent]; or
  - (b) A child abuse or neglect check reveals [Cabinet records reveal] that the applicant, adolescent member of the household, or adult member of the household, has been found [by the cabinet] to have:
    1. Committed sexual abuse or sexual exploitation of a child;
    2. Been responsible for a child fatality related to abuse or neglect; or
    3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws.

Section 3. Procedure for Requesting a Cabinet Child Abuse or Neglect Check. Prior to approval of an applicant, a child-placing agency shall request a child abuse or neglect check by submitting to the cabinet:

- (1) [Prior to approval of an applicant; and
  - (2) By submitting to the cabinet] A completed form, ["]DPP-157, Child Abuse or Neglect Check
- (2) Documentation required to request a child abuse or neglect check from the child welfare agency in each previous state of residence, if the applicant or adult household member has resided outside of the state of Kentucky in the previous five (5) years[":

Section 4. Request for a Child Abuse or Neglect Check from Another State. (1) The cabinet shall conduct a child abuse or neglect check as required by 42 U.S.C. 671(a)(20) when a completed DPP-157 is submitted to the cabinet.

- (2) The cabinet shall:
  - (a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and

(b) Waive the requirements specified in 922 KAR 1:470. Section 3(4).

Section 5. Background Checks Required for a Caretaker Relative. (1) A caretaker relative, and each adult member of the household, shall submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1) and in accordance with 922 KAR 1:130, by the:

1. Kentucky Justice and Public Safety Cabinet; and
2. Administrative Office of the Courts; and

(b) A child abuse or neglect check conducted by the cabinet.  
 (2) An adolescent member of a caretaker relative's household shall submit to a child abuse or neglect check conducted by the cabinet in accordance with 922 KAR 1:130 [Reports Relating to Committed Children. The cabinet shall disclose and receive information in accordance with KRS 605.090(1)(b) and (6)].

Section 6. [6-] Approval. (1) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, approval of an applicant or caretaker relative who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated voluntarily, shall be handled on a case-by-case basis with consideration given to the:

- (a) Nature of the offense;
- (b) Length of time that has elapsed since the event, and
- (c) Applicant's life experiences during the ensuing period of time.

(2) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, an applicant or caretaker relative may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:

- (a) An adolescent member of the household has:
  1. Been found by the cabinet to have abused or neglected a child;
  2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or
- (b) An adult member of the household has been:
  1. Convicted of a nonviolent felony or misdemeanor;
  2. Found [by the cabinet] to have abused or neglected a child; or
3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

Section 7. [6-] Reevaluation. (1) An approved foster or adoptive parent and each adult member of the household shall submit annually, prior to or during the anniversary month of initial approval, to a:

- (a) Criminal records check as described in Section 2(1)(a) of this administrative regulation; and
  - (b) Child abuse or neglect check conducted by the cabinet.
- (2)(a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 2(1)(a) through (c) of this administrative regulation.
- (b) If an adult becomes a new member of an approved caretaker relative's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 5(1) of this administrative regulation.
- (3) If an adolescent becomes a new member of an approved foster or adoptive parent or caretaker relative's [parent's] household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household.

Section 8. [7-] Maintenance of Records. (1) A completed copy of each criminal records check conducted pursuant to Section 2(1) of this administrative regulation and the [a-]DPP-157[Child Abuse or Neglect Check-] shall be maintained on behalf of each:

- (a) Foster or adoptive parent;
- (b) Applicant not approved as a foster or adoptive parent; and
- (c) Adult member of the applicant's household.

(2) A completed copy of each [DPP-157, ~~Child Abuse or Neglect Check~~] shall be maintained on behalf of each adolescent member of the:

(a) Applicant's household; or

(b) Caretaker relative's household

(3) A completed copy of the DPP-157 and criminal records check conducted pursuant to Section 5 of this administrative regulation shall be maintained for each

1. Caretaker relative; and

2. Adult member of the caretaker relative's household

Section 9. [8.] Incorporation by Reference. (1) "DPP-157, Child Abuse or Neglect Check", edition 02/08 [December 2004] is incorporated by reference

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m

MARK A. WASHINGTON, Commissioner

TOM EMBERTON, JR., Acting Secretary

APPROVED BY AGENCY: December 10, 2007

FILED WITH LRC: December 12, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008 at 9 a.m. in the Health Services Board Room, on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Deanner, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure by which the cabinet shall conduct background checks for foster or adoptive parents, caretaker relatives, and their household members and related reporting requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish background check procedures and reporting requirements for the approval of prospective foster/adoptive parents and caretaker relatives for the provision of out-home-care services to children.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by providing background check procedures and related reporting requirements for the approval of foster/adoptive parents and caretaker relatives.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the requirements of background checks for foster or adoptive parents and caretaker relatives to preserve the safety of children in said out-of-home care placements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment clarifies Kentucky's child abuse and

neglect check processes for other states, makes Kentucky's background check requirements consistent with the federal mandates governing approval of foster/adoptive homes, distinguishes background check requirements for caretaker relatives, makes technical corrections, and updates incorporated materials.

(b) The necessity of the amendment to this administrative regulation: Pub.L. 109-248, The Adam Walsh Child Protection and Safety Act of 2006, made changes to Title IV-E of the Social Security Act that include new state requirements regarding the approval of prospective foster/adoptive homes. If a prospective foster/adoptive parent (i.e., applicant) has lived in another state within the previous five years, the approving state agency must ensure the applicant submits to a child abuse and neglect check(s) conducted by the previous state(s) of residence. All applicants will be required to submit to a finger-print check of the Federal Bureau of Investigation's National Crime Information Database. The amendment is necessary to ensure federal compliance, provide clarification to other states, and avoid federal financial penalty to Kentucky's Title IV-E funding or a percentage of \$81 million federal dollars provided to Kentucky's foster and adoptive programs and their proper administration.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statute by ensuring compliance with recently enacted federal mandates.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by ensuring compliance with state and federal laws governing background checks for foster/adoptive parents and caretaker relatives and safeguarding children in said out-of-home-care placements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 4,170 privately and publicly approved foster/adoptive homes and approximately 4,900 approved caretaker relatives in Kentucky. On average, 1,711 background checks for foster/adoptive parents are processed monthly by the cabinet.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A prospective foster/adoptive parent will be required to submit to finger-print check of the National Crime Information Database for initial approval, upon adoption of this regulatory amendment. In addition, if the prospective foster/adoptive parent has resided in another state(s) in the previous five years, the prospective foster/adoptive parent will be required to submit to child abuse and neglect check(s) conducted by the other state(s) of residence.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Private child-placing agencies will incur the fees charged for criminal background checks in the course of their consideration of a prospective foster/adoptive parent applicant. Prospective foster/adoptive parents and caretaker relatives will not incur any costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will benefit through their compliance with the federal mandate, Kentucky's avoidance of federal financial penalty to its Title IV-E funding, and enhanced safeguards for children in out-of-home care.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Initial costs will be offset by the avoidance of federal financial penalty to Kentucky's Title IV-E funding.

(b) On a continuing basis: Ongoing costs will be offset by the avoidance of federal financial penalty to Kentucky's Title IV-E funding

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-E and State General Fund support Kentucky's foster/adoptive

parents and related administrative support. The Temporary Assistance for Needy Families Block Grant also supports the consideration of caretaker relatives.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increases in fees or funding to implement this administrative regulation due to the avoidance of federal financial penalty.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation did not establish or increase any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering will not be applied as this administrative regulation will be implemented statewide in the same manner.

financial penalty.

(d) How much will it cost to administer this program for subsequent years? Additional funds will be required during subsequent years to maintain compliance with federal mandates governing the approval of foster/adoptive parents.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate 42 U.S.C. 671(a)(20)

2. State compliance standards. KRS 194A.050(1), 199 462(4), 199 640(5), 605.150.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671(a)(20)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation imposes a stricter requirement than the federal mandate because the Cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the Cabinet reveals that a household member, age twelve (12) or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements have been imposed in Kentucky for the safety of the children in foster or adoptive care.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199 462(4), 199 640(5), 605.150, 42 U.S.C. 671(a)(20), 45 C.F.R. 1356.30

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new state or local revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new state or local revenues.

(c) How much will it cost to administer this program for the first year? Additional funding will be required during the first year to ensure compliance with federal mandates governing the approval of prospective foster/adoptive parents and avoid related federal

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, DECEMBER 14, 2007

**GOVERNOR'S OFFICE**  
**Kentucky Department of Veterans Affairs**  
**Office of Kentucky Veterans Centers**  
**(New Administrative Regulation)**

**17 KAR 3:030. Drug testing procedures at Kentucky Department of Veterans Affairs state Veterans nursing homes.**

RELATES TO. 41 U.S.C. 701-707

STATUTORY AUTHORITY: KRS 40.325(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.325 authorizes the Kentucky Department of Veterans Affairs to promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations. This administrative regulation establishes procedures that will ensure state veteran nursing homes will comply with KRS 18A.043 and 41 U.S.C. 701-707, through drug testing of those state nursing home employees caring for veteran residents and children within state veteran nursing home child care centers.

Section 1. Definitions. (1) "Administrator" means the person in charge of a Kentucky Veterans Center, or that person's specific designee.

(2) "Applicant" means an individual seeking employment in a test-designated position at a facility operated by the department.

(3) "Appointing authority" means the Commissioner, Kentucky Department of Veterans Affairs or the Commissioner's designee.

(4) "Controlled substance" is defined in KRS 218A.010.

(5) "Confirmatory test" means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy.

(6) "Department" means the Kentucky Department of Veterans Affairs.

(7) "Donor" means the individual from whom a urine specimen is collected.

(8) "Drug" is defined in KRS 218A.010.

(9) "Initial test" or "screening test" means an immunoassay test to eliminate negative urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing.

(10) "Kentucky Veterans Center" means a state veterans nursing home operated by the Kentucky Department of Veterans Affairs and includes the Eastern Kentucky Veterans Center in Hazard, the Western Kentucky Veterans Center in Hanson, and the Thomson-Hood Kentucky Veterans Center in Wilmore.

(11) "On duty" means being engaged in or on-call to be engaged in, the performance of work responsibilities for the employer.

(12) "Reasonable suspicion" means the quantity of proof or evidence, based on specific, objective facts and rationally-derived inferences from those facts about the conduct of an individual that would lead a reasonable person, based upon his or her training or life experiences, to suspect that a KDVA employee has been using illegal drugs, controlled substances, prescription or nonprescription medication, or alcohol in violation of this administrative regulation.

(13) "Refusal to submit to a drug test" means the following

(a) Failing to provide an adequate urine sample without an adequate medical explanation;

(b) Engaging in conduct that obstructs the testing process; or

(c) Refusing to be tested

(14) "Sample" means a representative portion of a urine specimen or quality control sample used for testing.

(15) "Serious work accident" means any on-duty accident or incident resulting in personal injury or death to any person.

(16) "Specimen" means the portion of urine that is collected from a donor.

(17) "Support services" means positions that do not provide direct resident or child care and includes employees in the fields of maintenance, dietary services, social services, recreational services, and administrative services.

(18) "Test-designated employee" means an individual employed at a KDVA Veterans Center who meets any of the following conditions:

(a) Provides care, treatment, or support services to a resident of the facility;

(b) Provides care, supervision, or support services to a child or to children of a childcare center located in a KDVA Veterans Center.

Section 2. Applicability. (1) The Department shall develop and implement test-designated employee drug testing procedures subject to the approval of the appointing authority.

(2) This administrative regulation applies to test-designated position applicants and test-designated position employees.

(3) This administrative regulation applies to drug testing conducted under the authority of KRS 40.325 to carry out the requirements of 18A.043 and 41 U.S.C. 701-707 regarding a drug-free workplace.

(4) Coordination of state and federal administrative regulations. This administrative regulation shall also apply to an employee subject to mandatory federal regulations governing drug testing. However, the employee is subject only to the provision of the federal regulation in any circumstance in which:

(a) It is not possible to comply with both this administrative regulation and the federal regulation, or

(b) Compliance with this administrative regulation is an obstacle to the accomplishment and execution of any requirement of the federal regulation.

Section 3. Prohibited Behavior. The following activities are prohibited while on duty or on KDVA Veteran Center grounds:

(1) The unlawful manufacture, distribution, sale, dispensation, possession, or use of any controlled substance,

(2) Consuming or under the influence of illegal drugs, of drugs illegally obtained, or consuming or under the influence of alcoholic substances;

(3) The use, misuse, or abuse of prescription or non-prescription medication in a quantity sufficient to impair a test-designated employee's ability to perform assigned duties or in any way places patient or fellow employee safety at risk; or

(4) Interfering with any testing procedure or tampering with any test sample

Section 4. Testing of Test-Designated Employees. (1) The appointing authority shall require an applicant for a test-designated position, as a condition of continued employment, to be subject to a drug test as provided in this administrative regulation.

(2) The Department shall establish and have operational the test-designated employee drug testing procedures as provided in this administrative regulation within 120 days following the adoption of this administrative regulation.

(3) Tests authorized. The following tests shall be authorized:

(a) Reasonable suspicion testing. A test-designated employee shall submit to a drug test if there is reasonable suspicion that the employee has violated this administrative regulation.

(b) Preappointment testing. An applicant being considered for a test-designated position shall submit to and pass a drug test prior to being appointed to a test-designated position.

(c) Postaccident testing. A test-designated employee shall submit to a drug test if there is evidence that the test-designated employee may have caused or contributed to a serious work accident.

(d) Random drug testing. A test-designated employee shall submit to a drug test if the employee is selected as part of the random drug testing component of the KDVA Drug Testing Program. The appointing authority may direct that up to twenty-five (25) percent of the total number of test-designated employees per each KDVA Veterans Center be selected for drug testing each year.

Selection shall be done on a purely random basis according to drug testing procedures adopted within 120 days of the promulgation of this regulation. Should a test-designated employee be randomly selected more than once per year, that employee will not

have to be tested if the immediate previous testing of that person took place within sixty (60) days of the new random selection date

(e) Follow-up testing. A test-designated employee shall submit to up to three (3) follow-up drug tests per year at the direction of the appointing authority within one year of any of the following occurrences.

1. The employee's voluntary disclosure of drug problems;
2. Entry into, or completion of a drug rehabilitation program; Employee failure in a pre-appointment drug test or refusal to take a pre-appointment drug test; Any time the employee has been disciplined for violating this regulation.

#### Section 5. Penalties (1) Positive Test Results.

(a) A positive test result shall constitute a violation of this administrative regulation and shall constitute just cause for the appointing authority to discipline the donor, up to and including dismissal, according to applicable laws, regulations, and policies.

(b) The appointing authority shall specify, in writing, the penalty that may be imposed, including any mandatory penalties, for violating this administrative regulation. However, an appointing authority shall immediately remove a test-designated employee from the employee's duties if the employee tests positive for prohibited drugs or otherwise violates this administrative regulation.

(2) Employees selected for a test-designated position. An employee selected for a test-designated position is prohibited from serving in the test-designated position until the employee has submitted to and passed a pre-appointment drug test. If the employee fails or refuses to submit to the drug test, interferes with a test procedure, or tampers with a test sample, the following shall occur.

(a) An applicant not presently employed by the Commonwealth shall not be appointed to the test-designated position;

(b) An applicant who is employed by the Commonwealth, but is being considered for promotion to or otherwise appointment to the test-designated position, shall not be promoted or otherwise appointed to that position;

(c) An applicant who is employed by the Department, who fails or refuses to submit to the drug test, shall be subject to disciplinary actions for the failure or refusal.

(3) Self-Reporting. A test-designated employee who voluntarily discloses to the appointing authority a problem with drug abuse (controlled substances, illegal substances, or alcohol abuse) shall not be disciplined for the disclosure if it occurs prior to any of the kinds of drug testing outlined above (preappointment, reasonable suspicion, postaccident, or random), but shall be provided an opportunity to take leave to enter a drug rehabilitation program.

(a) Despite a case where the test-designated employee self-reported drug abuse as stated above, the appointing authority may remove the employee from the care of residents and of children upon receiving the report from the employee.

(b) A test-designated employee cannot take advantage of Section (3) above, regarding no disciplinary action, more than once during his or her employment.

(c) A self-reporting employee remains subject to all drug testing requirements and other requirements outlined in this regulation.

(4) Federal drug testing programs. Nothing in this administrative regulation shall preclude the appointing authority from implementing a drug-testing program required by federal law.

Section 6. Drugs Included. (1) When a drug test is administered, the department shall, at a minimum, test for:

- (a) Marijuana;
- (b) Cocaine;
- (c) Opiates;
- (d) Amphetamines;
- (e) Phencyclidine;
- (f) Morphine;
- (g) MDMA (Ecstasy);
- (h) Methadone;
- (i) Benzodiazepines;
- (j) Barbituates; and
- (k) Oxycodone.

1. If conducting reasonable suspicion or post-accident drug testing, the department may test for any drug listed in Schedule 1

or 2 as defined in KRS Chapter 218A.

2. Before the department tests for other drugs, it must first obtain approval from the appointing authority.

3. The department or contract agency requesting approval for the testing of other drugs shall submit to the appointing authority the agency's proposed initial test methods, testing levels, and proposed performance test program.

(2) This administrative regulation shall not limit an agency that is specifically authorized by law to include additional categories of drugs in the drug testing of its own employees.

(3) Initial and confirmatory drug testing conducted pursuant to this administrative regulation shall utilize cutoff levels as specified in the federal "Mandatory Guidelines for Federal Workplace Drug Testing Programs."

(4) Drug test specimens that meet or exceed the cutoff levels as specified in subsection (3) of this section shall be reported as a positive test result and shall constitute a failed drug test.

(5) Drug test specimens that test below the cutoff levels as specified in subsection (3) of this section shall be reported as a negative test result and shall constitute a passed drug test. No further testing of a negative specimen for drugs shall be permitted, and the negative specimen shall be discarded or pooled for use in a laboratory's internal quality control program.

Section 7. Test-Designated Employee Drug Testing Procedures. (1) The test-designated employee drug-testing program developed pursuant to Section 2 of this administrative regulation shall be implemented in accordance with nationally recognized standards as specified in the federal "Mandatory Guidelines for Federal Workplace Drug Testing Programs."

(2) All costs associated with implementing the test-designated employee drug-testing program developed pursuant to Section 2 of this administrative regulation shall be borne by the Office of the Kentucky Veterans Center.

(3) The appointing authority shall maintain records concerning all Veterans Center employee drug testing in a secure manner, so that disclosure of information to unauthorized persons does not occur.

(4) Except as required by law or expressly authorized or required in this section, the appointing authority or anyone with knowledge shall not release employee information that is contained in the records maintained pursuant to this administrative regulation.

(5) An employee subject to testing shall be entitled, upon written request, to obtain copies of any records pertaining to the employee's drug tests. The appointing authority shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

(6) The appointing authority may disclose information required to be maintained under this administrative regulation pertaining to an employee to that employee or to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug test administered under the requirements of this administrative regulation or from the appointing authority's determination that the employee engaged in prohibited conduct (including a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

(7) The appointing authority shall release information regarding an employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of this information shall be in accordance with the terms of the employee's consent.

Section 8. Test-Designated Employee Notification. (1) New employees shall receive information and training concerning this administrative regulation as part of the employee's initial orientation training.

(2) Current employees shall receive information and training concerning this administrative regulation within the first three (3) months following the adoption of this administrative regulation.

(3) Information and training provided pursuant to subsection (2) of this section shall include information regarding the type and nature of services and supports available through the Kentucky



Employee Assistance Program, as well as how to access these services and supports.

(4) The Personnel Office within each Veterans Center shall maintain documentation that all employees have received information and training concerning this administrative regulation and shall provide a copy of that documentation to the Administrative Branch Manager, Office of Kentucky Veterans Center, who shall coordinate with the Personnel Administrator of the Office of the Commissioner, Frankfort, Kentucky.

(5) All test-designated employees shall sign a document certifying:

(a) Receipt of information and training concerning this administrative regulation;

(b) An understanding of the requirements, limitations, and restrictions on employee conduct contained in this administrative regulation; and

(c) An understanding of the potential consequences, up to and including dismissal, for violation of this administrative regulation.

**Section 9. Employee Duty to Report Convictions.** A test-designated employee shall report to the KDVA headquarters through his or her immediate supervisor any criminal drug statute for which he or she was convicted within five (5) working days of the conviction.

**Section 10. Prescription and Nonprescription Medications.** (1) A test-designated employee taking a prescription or nonprescription medication prior to or during the work shift shall immediately inform his or her supervisor of this fact if:

(a) The instructions, indications, and contraindications associated with the medication give the employee reason to believe that the medication may in some way impair work performance; or

(b) Having once taken the medication, the employee begins to experience an unexpected, typical or adverse reaction to the medication, which impairs work performance.

(2) An employee who fails to comply with subsection (1) of this section shall be subject to disciplinary action up to and including termination of employment.

(3) Having been notified by an employee pursuant to subsection (1) of this section the employee's supervisor shall closely monitor the employee's work performance throughout the employee's work shift. If the supervisor determines that there is a sufficient perceived impairment of the employee's work performance so as to raise concerns related to employee or resident or child safety, the supervisor shall notify the administrator concerning the employee's impaired work performance. The administrator shall then conduct an assessment and make a determination regarding the employee's impaired work performance.

(4) If the results of an assessment conducted pursuant to subsection (3) of this section indicate that the employee's work performance is impaired so as to raise concerns related to employee or resident or child safety, the administrator shall:

(a) Transfer or temporarily assign the employee away from resident care or child care, and to a job function unrelated to such care, provided that the transfer or temporary reassignment does not place the employee or other employees at risk of injury or otherwise jeopardize the orderly operation of the Veterans Center; or

(b) Allow the employee to depart the workplace and use available leave time, taking care to assist the employee if the impairment jeopardizes the safety of the employee or other employees.

(5) The employee shall be allowed to return to regular work duties if the results of an assessment conducted pursuant to subsection (3) of this section indicate that the employee's work performance is not impaired.

**Section 11. Incorporation by Reference.** (1) "Mandatory Guidelines for Federal Workplace Drug Testing Programs", November 1, 2004 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at The Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LESLIE E. BEAVERS, Commissioner

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: December 7, 2007 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on January 25, 2008 at 10:30 a.m. at the Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Dennis W. Shepherd, Staff Attorney, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203, fax (502) 564-9240.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dennis Shepherd

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes drug-testing procedures for test-designated employees at state veterans nursing homes

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to ensure the safety and well-being of sick, disabled, Alzheimer-inflicted, and otherwise ill veterans who are residents of state veterans nursing homes, and to safeguard the children of nursing home employees who attend the child care centers located within these homes.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 40.325 authorizes the Kentucky Department of Veterans Affairs to promulgate administrative regulations to carry out its mission. KRS 18A.043, 41 U.S.C. 701-707 provide a federally mandated state program to ensure a drug-free workplace. This regulation is the means to carry out the federally mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow for the establishment of a drug testing program to be conducted with test-designated employees at state operated nursing homes that will ensure compliance with federal law requiring certification of a drug-free workplace.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently a total of approximately three facilities operated by the Kentucky Department of Veterans Affairs, with approximately 750 employees (both state and contract), will be impacted by this administrative regulation, with up to 250 additional employees affected upon authorization and establishment of a fourth KDVA nursing home.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Employees who provide care and support services to disabled veterans and to children at the state's veterans nursing homes will potentially be impacted in 3 ways:

(a) Prospective new test-designated employees will be required to successfully pass a drug test as a condition for employment.

(b) Up to twenty-five (25) percent of the current test-designated workforce at the nursing homes will be subject to random drug tests per year, and

(c) Any current test-designated employee will be subject to drug testing when there is reasonable suspicion to believe that the employee is in violation of this administrative regulation and when a serious work accident occurs.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

Using the current total nursing home workforce of 750 employees the implementation costs may be computed as follows: Pre-employment applicant drug screening: The current average new hires for the nursing homes is 200 per year. Assuming this average number, the annual cost would be calculated by multiplying 200 by forty-two (42) dollars, with forty-two (42) dollars being the current cost per sample. This total equals \$8400. Random tests = twenty-five (25) percent of 750 times the current estimated cost of testing one sample. Therefore, the cost per year if twenty-five (25) percent of the workforce is tested is: 188 times \$42.00, or \$7896. Other tests: The incidents that would trigger reasonable suspicion testing or post-accident testing, based upon past nursing home experience number less than 25 total. Therefore, using 25 as the upper limit, this adds an additional \$1050 to the annual costs of implementation (25 times \$42). In addition, follow-up testing should be contemplated at a conservative estimate of five test-designated employees who require up to three follow-up tests, or an additional annual total of 15 tests. This would add \$630 to the annual implementation costs. Summary:

- Pre-employment applicants \$8400
- Random test costs per year: \$7896
- Reasonable suspicion/Post-accident tests: \$1050
- Follow-up testing: \$630
- Estimated Total Implementation Costs: \$17,976

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: All costs associated with the drug testing of prospective or current test-designated facility employees will be borne by the Office of Kentucky Veterans Centers. All costs associated with the central office administration of the drug-testing program will be borne by the Kentucky Department of Veterans Affairs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new or increased fees are anticipated.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of a person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government: No

2. What units, parts or divisions of state or local government will be impacted by this administrative regulation: Kentucky Department of Veterans Affairs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 18A.043 and 41 U.S.C. 701-707.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency for the first full year the administrative regulation is to be in effect:

- a. How much revenue will this administrative regulation gener-

ate for the state or local government for the first year: None

b. How much revenue will this administrative regulation generate for the state or local government for subsequent years: None

c. How much will it cost to administer the program for the first year: \$17,976

d. How much will it cost to administer this program for subsequent years: \$17,976

#### GENERAL GOVERNMENT CABINET Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:110. Prescription and dispensation of drugs for animal use.

RELATES TO: KRS 321.181(5)(b)

STATUTORY AUTHORITY: KRS 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.181(5)(b) provides that the practice of veterinary medicine includes the prescribing, administering, or dispensing of drugs and medications for veterinary purposes. KRS 321.235(3) and 321.240(5) authorizes the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 321. This administrative regulation establishes a procedure for the prescription and dispensation of drugs by licensed veterinarians for use in animals and livestock.

Section 1. Definitions. (1) "Prescription" means an order from a veterinarian to a pharmacist or another veterinarian authorizing the dispensing of a veterinary prescription drug to a client for use on or in a patient.

(2) "Legend drug" means veterinary prescription drug.

(3) "Veterinary drug" means:

(a) A drug for animal use recognized in the official United States Pharmacopoeia or National Formulary of the United States;

(b) A drug intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals;

(c) A drug, other than feed, medicated feed, or a growth promoting implant intended to affect the structure or function of the body of an animal; or

(d) A drug intended for use as a component of a drug in paragraph (a), (b), or (c).

(3) "Veterinary prescription drug" means:

(a) A drug that is not safe for animal use without a veterinarian using or ordering the use of the product, and that is required by federal law to bear the following statement: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian";

(b) A drug that is required by state law to be dispensed only on order or prescription of a licensed veterinarian;

(c) The extra-label use of an over-the-counter animal drug or human drugs; and

(d) A medicament compounded by mixing two (2) or more legally-obtained over-the-counter or prescription drugs.

Section 2. Prescribing and Dispensing. (1) A veterinary prescription shall include all of the following:

(a) The name and address of the veterinarian and, if the prescription is a written order, the signature of the veterinarian;

(b) The name and address of the client;

(c) The species and identity of the patient for which the prescription is issued;

(d) The name, strength, and quantity of the drug prescribed;

(e) The date on which the prescription is issued;

(f) The directions for administering the drug;

(g) If the patient is a food producing animal, the withdrawal time for the veterinary drug;

(h) If the prescription authorizes extra-label use, the manner in which the client may use the drug;

(i) Any cautionary statements required by law; and

(j) Number of refills allowed.

(2) A veterinarian may not:

(a) Prescribe for or dispense to a client a veterinary prescrip-

tion drug or a drug for extra-label use without personally examining the patient unless a veterinary-client-patient relationship exists between the prescribing veterinarian, client and patient, and the veterinarian determines that the client has sufficient knowledge to administer the drug properly;

(b) Prescribe or dispense a veterinary prescription drug to a client unless the veterinarian indicates in the appropriate records described under Section 4 of this administrative regulation, within seventy-two (72) hours after the prescription is issued or the drug is dispensed, that the prescription has been issued or that the drug has been dispensed;

(c) Prescribe a drug to a client for extra-label use on a patient unless all of the following apply:

1. A veterinary-client-patient relationship exists between the veterinarian, client and patient and the veterinarian has made a careful medical diagnosis of the condition of the patient within the context of that veterinarian-client-patient relationship;

2. The veterinarian determines that there is no drug that is marketed specifically to treat the patient's diagnosed condition, or determines that all of the drugs that are marketed for that purpose are clinically ineffective;

3. The veterinarian recommends procedures for the client to follow to ensure that the identity of the patient will be maintained; and

4. If the patient is a food producing animal, the veterinarian prescribes a sufficient time period for drug withdrawal before the food from the patient may be marketed; or

(d) Transmit a prescription electronically unless the client approves the transmission and the prescription is transmitted to a pharmacist or veterinarian designated by the client.

**Section 3. Labeling.** (1) A veterinarian may not dispense a drug that has been prepared, mixed, formulated or packaged by the veterinarian unless the veterinarian affixes to the container in which the drug is dispensed a label containing all of the information specified in Section 2(1) of this administrative regulation, except the address of the client.

(2) A veterinarian may not dispense a veterinary prescription drug that has been prepackaged by its manufacturer for dispensing unless the veterinarian affixes to the container in which the drug is dispensed a label containing all of the information specified in Section 2(1) of this administrative regulation, except the address of the client.

(3) A veterinarian may dispense a veterinary over the counter drug without affixing any information to the container in which the drug is dispensed if a label that has been affixed to the container by its manufacturer provides adequate information for its use.

**Section 4. Prescription Records.** (1) A veterinarian shall maintain complete records of each veterinary prescription drug that the veterinarian receives, prescribes, dispenses or administers, and of each prescription issued by the veterinarian that authorizes extra-label use.

(2) Records of each veterinary prescription drug shall include the name of each veterinary prescription drug that is received, the name and address of the person from whom the drug is received and the date and quantity received, the name and address of the person to whom the drug is dispensed and the date and quantity dispensed and, if the veterinarian prescribes or administers the drug, the information specified in Section 2(1) of this administrative regulation.

(3) Records of each prescription authorizing extra-label use shall include the information specified in Section 2(1) of this administrative regulation.

(4) A veterinarian shall maintain records of each veterinary prescription drug for not less than five (5) years after the date on which the veterinarian prescribes, dispenses or administers the drug or extra-label use.

**Section 5.** (1) A veterinarian shall not be required to write a prescription for controlled substances or a prescription for any medication that, in the veterinarian's medical judgment, is not appropriate for the patient's medical care.

(2) A veterinarian may refuse to write a prescription if it is not

directly requested by a client with whom there is, in the veterinarian's opinion, a current and existing veterinarian-patient-client relationship.

(3) A prescription can be construed to include any manner of authorization for filling a prescription, including verbal or electronic communication.

(4) The veterinarian may delegate to an office employee the authority to communicate a refill of a legend drug to the pharmacy on behalf of the veterinarian pursuant to written protocol established prior to the delegation of such authority.

**Section 6.** (1) A veterinarian shall ensure that all federal legend drugs and veterinary prescription drugs are maintained, administered, prescribed, dispensed, and destroyed in compliance with all state and federal laws.

(2) A veterinarian shall not prescribe or dispense a quantity of drug that is greater than that the amount required for six (6) months of treatment for an animal, herd, or flock.

(3) To prescribe, sell, distribute, or dispense any drug requiring a prescription for use in the context of an animal, herd, or flock, a veterinarian shall first have performed all of the following:

(a) Performed an appropriate history and physical examination;

(b) Made a diagnosis based upon the history, physical examination, and pertinent diagnostic and laboratory tests;

(c) Formulated a therapeutic plan, and discussed it with the animal's owner/agent or guardian, along with the basis for it and the risks and benefits of various treatments options, a part of which might be a prescription drug; and

(d) Insured availability of the veterinarian or the veterinarian's staff for appropriate follow-up care.

**Section 7.** (1) A veterinarian may dispense a prescription drug only if the prescribing veterinarian has established a veterinarian-client-patient relationship.

(2)(a) A veterinary assistant may dispense a veterinary drug, a legend drug, or a veterinary prescription drug only under the direct supervision of the veterinarian by which he is employed.

(b) If a veterinary drug, a legend drug, or a veterinary prescription drug is dispensed by a veterinary assistant, the veterinarian shall ensure that the requirements of this regulation are met.

(3) A veterinary assistant employed by the prescribing veterinarian who has established a veterinary client patient relationship may dispense under the indirect supervision of the veterinarian by which he is employed.

**Section 8. Enforcement.** (1) Except as provided in paragraph 2 of this section, if the board has reason to believe that a person is violating or has violated this administrative regulation, the examining board may:

(a) Inspect the premises on which the person possesses, prescribes, dispenses, labels or administers veterinary drugs;

(b) Inspect pertinent records, equipment, materials, containers or facilities that are relevant to determining whether the person is violating or has violated this Section; and

(c) Collect relevant samples of veterinary drugs.

This is to certify that the Chair of the Kentucky Board of Veterinary Examiners has approved this administrative regulation prior to its filing by the Kentucky Board of Veterinary Examiners with the Legislative Research Commission as required by KRS Chapter 13A, to carry out and enforce provisions of KRS Chapter 321.

PERRY W. WORNALL, D.V.M., Chair

ROBERT M. BURNSIDE, Secretary

APPROVED BY AGENCY: December 4, 2007

FILED WITH LRC: December 4, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on Thursday, January 24, 2008 at 1 p.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is

open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Thursday, January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Claude Wagner, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Claude Wagner, Director

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes a procedure for the prescription and dispensation of drugs by licensed veterinarians for use in animals and livestock.

(b) The necessity of this administrative regulation: This regulation is necessary to provide licensees with a clearly defined procedure for prescribing and dispensing drugs for animal use.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235(3) and 321.240(5) authorized the board to promulgate regulations to carry out and enforce the provisions of KRS Chapter 321.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth guidelines for licensees when prescribing or dispensing drugs for animal use.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2,100 licensed veterinarians.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will be required to comply with the guidelines when prescribing or dispensing drugs for animal use.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new regulation will provide licensees with guidelines for prescribing and dispensing drugs for animal use.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The board estimates that no additional costs will be incurred by this new regulation.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by the new regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by license holders and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this new administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly establish or increase any fees.

(9) TIERING: Is tiering applied? No. Criteria apply equally to all licensed veterinarians.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Veterinary Examiners.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.181(5)(b).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## EDUCATION CABINET Kentucky Board of Education Department of Education (New Administrative Regulation)

### 705 KAR 4:250. Energy Technology Engineering Career Pathway.

RELATES TO: KRS 158.808

STATUTORY AUTHORITY: KRS 156.070, 158.808

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.808 requires the Kentucky Department of Education to establish an energy technology engineering career pathway. This administrative regulation establishes a process for the Kentucky Board of Education to administer the energy technology engineering career track program, approve grant recipients, and distribute funds to local school districts.

Section 1. Definition. "Career pathway" means a coherent, articulated sequence of rigorous academic and career and technical courses, including dual credit opportunities, leading to a post-secondary degree or industry-recognized certification or licensure, that is developed, implemented, and maintained in partnership with secondary and postsecondary institutions, business, and employers.

Section 2. Application Process. (1) A Kentucky public school district shall be eligible to apply for a grant through a request for proposal process.

(2) A local school district superintendent shall submit the application and have the approval of participating schools' school-based decision making councils and local board of education.

(3) A grant application shall indicate the fiscal agent as a local board of education.

(4) To be eligible for funding, an applicant school shall provide an energy career pathway which includes the following components:

(a) The Project Lead the Way middle school program Gateway to Technology, with content to include energy-related activities and the following Project Lead the Way pre-engineering courses at the high school level:

1. Introduction to Engineering Design;
2. Principles of Engineering;
3. Digital Electronics;

4. A specialized course in Energy and Power Technology, or integration of energy-related content and applications in each of the Project Lead the Way courses. The content shall include energy-related applications as developed by the Kentucky Department of Education, in consultation with representatives from the energy technology industry, the University of Kentucky Center for Applied Energy Research, the Council on Postsecondary Education, the Kentucky Community and Technical College System, Governor's Office of Energy Policy, local school districts, and Project Lead the Way; and

5. Engineering Design and Development, with content to include energy-related research and applications;

(b) The opportunity for students to participate in energy related internships or cooperative education with energy-related industries or postsecondary education;

(c) Matching funds that shall be allocated to directly support the implementation of the program, which may include other state, federal, local, or nonpublic sources, within the uses and conditions set forth by the source of those funds. Previously awarded Project Lead the Way state grants and local matches shall not be considered as matching funds for this program;

(d) Status as a registered Project Lead The Way site prior to disbursement of funds;

(e) Submission of seven (7) complete copies of the application plus an electronic copy.

**Section 3. Selection of Grants.** (1) The criteria for selection of applications for funding shall be based on the appropriateness and quality of the following:

(a) Process for identifying potential students and estimated enrollment in the Energy Technology Engineering Career Pathway;

(b) An implementation plan, which includes:

1. Computer availability, including hardware and software commonly used in related fields;
2. Teacher availability and certification;
3. Elementary school integration;
4. Middle school and high school program;
5. Measures of student progress to be utilized;
6. Instructional space;
7. Student Recruitment Plan, including recruitment of traditionally underserved populations;
8. Business and postsecondary partners and other education partnerships; and
9. Narrative of budget and timeline;

(c) Program evaluation to include annual graduate follow-up surveys;

(d) Level of individual school and district commitment for teacher professional development; and

(e) Narrative of budget and timeline, including the efficient and effective use of proposed grant funds and matching funds.

(2) An application shall be reviewed as follows:

(a) A team of evaluators shall review the applications; and

(b) The Kentucky Department of Education shall approve funding based upon the results of the review. Consideration may be given to provide for geographic diversity and the number of students to be served.

**Section 4. Grant Allocations and Requirements.** (1) The award size or range of grants shall be determined by the Kentucky Department of Education.

partment of Education.

(2) Allowable expenditures include:

(a) Laboratory equipment and instructional materials necessary for Project Lead the Way instruction;

(b) Computers and computer upgrades;

(c) Computer software required by Project Lead the Way;

(d) Laptop computer for the instructor;

(e) Travel expenses and registration fees for school counselors to attend the required Project Lead the Way counselors conference;

(f) Travel expenses and registration fees for teachers to attend the required Project Lead the Way summer teacher institutes;

(g) Resources and professional development for integrating energy activities in the curriculum; and

(h) Energy related instructional materials and equipment.

(3) State grant funds shall not be used to maintain, renovate, or build facilities or pay teacher salaries, but local district expenditures for these purposes may be included as matching funds.

(4) Monitoring of awarded grants shall include the following:

(a) Fiscal reports submitted quarterly to the Department of Education; and

(b) Annual program evaluation report on the implementation plan that outlines the project accomplishments related to the project need, objectives, and outcomes.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

JON E. DRAUD, Commissioner of Education

JOE BROTHERS, Chairperson

APPROVED BY AGENCY: December 12, 2007

FILED WITH LRC: December 14, 2007 at 10 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this proposed administrative regulation shall be held on January 2, 2008 at 2 p.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows the Kentucky Department of Education to establish an Energy Technology Engineering Career Track Program as required by HB 1 which was enacted by the 2007 second special legislative session.

(b) The necessity of this administrative regulation: This energy administration regulation was necessary to implement the provisions of HB 1 to establish an Energy Technology Engineering Career Track Program and to award grants to local school districts to establish the program in their district

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for how the Energy Technology Engineering Career Track

Program will be established and eligibility requirements for receiving a grant. The regulations also identifies the agencies that will be consulted in establishing the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The emergency regulation provides specific requirements for local school districts to be eligible for a grant to establish a Energy Technology Engineering Career Track Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statute: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, Career and Technical education coordinators, students, University of Kentucky Center for Applied Energy Research, Governor's Office of Energy Policy, Council on Postsecondary Education, Kentucky Community and Technical College system, Project Lead the Way staff, program staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The local school districts (superintendents, principals, Career and Technical Education coordinators) that submit an application for funding and receive approval for funding will be required to complete an application and successful candidates will need to implement an Energy Technology Engineering Career Pathway Program as outlined in the regulation. Students will need to take certain core courses to complete the program. University of Kentucky Center for Applied Energy Research, Governor's Office of Energy Policy, Council on Postsecondary Education, Kentucky Community and Technical College System, Project Lead the Way staff, and KDE staff will determine the energy-related curriculum content. CPE, KCTCS, and KDE staff will review and select candidates. KDE staff will be required to process the MOA and establish fiscal and programmatic reporting. KDE staff and UK Project Lead the Way staff will provide technical assistance to the successful programs.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A local school district choosing to participate will need to: Register and be approved as a Project Lead the Way site. Provide appropriate instructional space to meet PLTW facility criteria. Provide instructional staff to teach PLTW courses including energy technology components. Provide matching funds to support the implementation of the Energy Technology Career Pathway. Provide computers, other instructional equipment, and instructional materials to support the PLTW classes. Fund professional development for teachers who will be teaching PLTW courses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The local school districts who receive a grant will be providing matching funds to support the implementations of the program. The total cost of the program implementation in a school district is approximately \$100,000 in total, in addition to the teacher salaries.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Kentucky will have more students who are prepared for energy technology engineering related careers who will contribute to future research and development needs in the field of energy.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The cost to the Kentucky Department of Education will be in the form of staff time to provide technical assistance to local school districts. It is estimated that the first year will require

twenty-five (25) percent of a program consultant's time, which is estimated to be valued at \$15,000.

(b) On a continuing basis: The annual cost after the first year will depend on the growth of the energy technology career pathways program over time, but the cost will be limited to staff time in providing technical assistance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds appropriated to Kentucky Department of Education.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Funding will be needed to sustain the implementation and expansion of this program in the initial school selected and future schools who have interest in implementing the program.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administration regulation does not establish any fees directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the regulation applies to all public school districts that apply for the grant.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? school districts which choose to participate.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.808.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The school districts selected to receive this grant will be required to provide matching funds of approximately \$50,000 plus the teachers' salaries.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Future revenue may be increased due to the contribution of the program graduates can have on energy research and development.

(c) How much will it cost to administer this program for the first year? The only cost will be staff time estimated to be twenty-five (25) percent of one position (\$15,000).

(d) How much will it cost to administer this program for subsequent years? If the program grows, additional staff time will be needed.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department of Public Protection

Office of Insurance

Division of Health Insurance Policy and Managed Care  
(New Administrative Regulation)

806 KAR 17:005. Health Insurance forms and reports.

RELATES TO: KRS 304.4-010, 304 14-120, 304 14-190,



304.17A-095, 304.17A-096

STATUTORY AUTHORITY: KRS 304.2-110

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 304.2-110 authorizes the executive director of insurance to promulgate reasonable administrative rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. This administrative regulation establishes forms and reports to be submitted to the Office of Insurance by a health insurer.

Section 1. (1) "Form HIPMC-RF-25, Basic Health Benefit Plan Summary Sheet-Form and Rate Filings" shall be filed by an insurer with a form or rate for a basic health benefit plan.

(2) "Form HIPMC-BHP-1, Basic Health Benefit Plan Annual Report," shall be filed annually by an insurer offering a basic health benefit plan.

(3) "Form HIPMC-R32, Health Benefit Plan Rate Filing Information Form" shall be filed with a rate for a health benefit plan.

(4) "Form HIPMC-F1, Face Sheet and Verification Form" shall be filed as the coversheet of a rate or form filing for a health benefit plan.

(5) "Income and Expense Worksheet" shall be filed with a rate for a health benefit plan.

(6) "Form HIPMC-R33, Health Benefit Plan Regions," which includes eight (8) identified health benefit plan regions in Kentucky may be filed for a geographic region factor adjustment in a rate for a health benefit plan.

(7) "Form HIPMC-R34, Certification Form" shall be filed with a rate for a health benefit plan for an individual, association, or small group.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form HIPMC-RF-25, Basic Health Benefit Plan Summary Sheet-Form and Rate Filings" (11/2007);

(b) "Form HIPMC-BHP-1, Basic Health Benefit Plan Annual Report" (04/05);

(c) "Form HIPMC-R32, Health Benefit Plan Rate Filing Information Form" (04/05);

(d) "Form HIPMC-F1, Face Sheet and Verification Form" (04/05);

(e) "Income and Expense Worksheet" (1998);

(f) "Form HIPMC-R33, Health Benefit Plan Regions" (12/00); and

(g) "Form HIPMC-R34, Certification Form" (04/05).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Office of Insurance Web site at <http://doi.ppr.ky.gov/>.

JULIE MIX MCPEAK, Executive Director

TIM LEDONNE, Commissioner

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: December 7, 2007

FILED WITH LRC: December 10, 2007 at 2 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on January 22, 2008 at 9 a.m. (EST) at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 15, 2008, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact

person.

**CONTACT PERSON:** Melea Rivera, Health Policy Specialist, Kentucky Office of Insurance, 215 West Main Street; P.O. Box 517; Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes forms and reports for use by health insurers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide health insurers with reports and forms that shall be used by health insurers operating in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. This administrative regulation establishes forms and reports for use by health insurers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist insurers by providing the documents required to file new or revised rates and forms or to report data to the Office of Insurance.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all health insurers who operate in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Health insurers are currently required to use the documents incorporated by reference in this administrative regulation. These forms have been incorporated by reference in multiple administrative regulations in Chapter 17 of Title 806, therefore, limited impact is expected.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): KOI does not anticipate that health insurers will incur significant additional costs as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The resulting benefits are that health insurers will be in compliance with this administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: KOI does not anticipate any direct or indirect costs to initially implement the amendment to this administrative regulation.

(b) On a continuing basis: KOI does not anticipate any direct or indirect costs to implement the amendment to this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to implement and enforce this administrative regulation is the existing budget of the KOI.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KOI does not anticipate that the implementation of this amendment will require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation incorporates by reference forms and reports for use by insurers and the requirement to use these documents will apply equally to all Kentucky licensed health insurers who do business in Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance is promulgating this administrative regulation to establish the forms and reports for use by insurers who do business in the State of Kentucky. This administrative regulation will not produce a significant impact to the Office of Insurance.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(2) authorizes the Executive Director of Insurance to promulgate administrative regulations. This administrative regulation establishes forms and reports for use by health insurers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the first year for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for subsequent years for state or local governments.

(c) How much will it cost to administer this program for the first year? The Office of Insurance should not incur significant costs to administer this amendment to an existing administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? The Office of Insurance should not incur costs to administer this administrative regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Quality Living (Repealer)

910 KAR 1:231. Repeal of 910 KAR 1:230.

RELATES TO: KRS Chapter 13B 010-170, 194A.700(2), 205.010(15), 205.955

STATUTORY AUTHORITY: KRS 194A.050(1), 205.950

NECESSITY, FUNCTION AND CONFORMITY: KRS 205.950 requires the cabinet, by administrative regulation, to establish

health, safety, and treatment requirements for certified adult day-care centers in Kentucky, and establish criteria for the certification of these centers. KRS 194A.050(1) requires the secretary to adopt, administer, and enforce all administrative regulation necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. This administrative regulation acts specifically to repeal 910 KAR 1:230, Adult Day-Care Center Certification. The certification and appeal procedure requirements of 910 KAR 1:230 will be incorporated into 910 KAR 1:160, Certification and Program Requirements for the Adult Day and Alzheimer's Respite Program.

Section 1. 910 KAR 1:230, Adult Day-Care Center Certification, is hereby repealed.

DEBORAH S. ANDERSON, Commissioner  
TOM EMBERTON, JR., Secretary

APPROVED BY AGENCY: December 10, 2007

FILED WITH LRC: December 12, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2008, at 9 a.m. in the Cabinet for Health and Family Services Board Room, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 31, 2008. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge, 502-564-6930 x 3432

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 910 KAR 1:230 Adult Day-Care Center Certification and places the certification and appeal procedure requirements for an adult day-care center in 910 KAR 1:160.

(b) The necessity of this administrative regulation: It is necessary to repeal 910 KAR 1:230 because the same program requirements for an adult day-care center are in 910 KAR 1:160.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to repeal 910 KAR 1:230 Adult Day-Care Center Certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to repeal 910 KAR 1:230 Adult Day-Care Center Certification.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation that acts specifically to repeal 910 KAR 1:230 Adult Day-Care Center Certification.

(b) The necessity of the amendment to this administrative regulation: See (2)(a).

(c) How the amendment conforms to the content of the authorizing statutes: See (2)(a).

(d) How the amendment will assist in the effective administration of the statutes: See (2)(a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

tive regulation: This is a new administrative regulation that acts specifically to repeal 910 KAR 1:230 Adult Day-Care Center Certification. However, those program requirements, including certification and appeal procedures, remain in effect through 910 KAR 1:160.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: See (3).

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are required to comply with this repealer regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no costs to regulated entities associated with this repealer regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Because the repeal of 910 KAR 1:230 will eliminate the duplication of having the same requirements in two separate regulations, regulated entities will not be confused by the same certification requirements and appeal procedures in two regulations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: This is a new administrative regulation that acts specifically to repeal 910 KAR 1:230 Adult Day-Care Center Certification.

(a) Initially: There will be no additional cost to the cabinet as a result of this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the cabinet as a result of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as this regulation will be applied in a like manner statewide.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department for Aging and Independent Living

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.950

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation acts specifically to repeal 910 KAR 1:230 Adult Day-Care Center Certification. Therefore, this administrative regulation will generate no revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation acts specifically to repeal 910 KAR 1:230 Adult Day-Care Center Certification. Therefore, this administrative regulation will generate no revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? Not applicable as this regulation acts specifically to repeal 910 KAR 1:230, Adult Day-Care Center Certification.

(d) How much will it cost to administer this program for subsequent years? Not applicable as this regulation acts specifically to repeal 910 KAR 1:230, Adult Day-Care Center Certification.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Support (New Administrative Regulation)

#### 921 KAR 1:430. Child support administrative hearings.

RELATES TO: KRS Chapter 13B, 15.055, 205.710, 205.712, 205.745, 205.7685, 205.769, 205.778, 237.110(4)(f), 341.392, 341.420, 405.411, 405.440(4), 405.450(5), 405.463, 405.465, 405.467, 405.470, 405.490(4)

STATUTORY AUTHORITY: KRS 13B.170, 194A.050(1), 205.712, 45 C.F.R. 302.10, 303.35

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, or to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 45 C.F.R. 302.10 requires each state to administer a Child Support Program. KRS 205.712 assigns the administration of the Child Support Program to the cabinet. 45 C.F.R. 303.35 requires the agency administering the Child Support Program to develop a procedure for administrative reviews of child support cases for individuals with complaints. KRS Chapter 13B establishes the administrative hearing process to be followed in the Commonwealth. KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B. This administrative regulation establishes the administrative hearing procedures used by the cabinet in the administration of the Child Support Program.

Section 1. Availability of a Hearing. (1) An opportunity for an administrative hearing shall be provided to an individual aggrieved by an action or inaction:

(a) On the part of the Division of Child Support; and

(b) That affects the child support case of the individual.

(2) An individual requesting an administrative hearing shall have the option to designate a representative to act on behalf of the aggrieved party for the hearing process, such as:

(a) Legal counsel;

(b) A relative; or

(c) Any other person.

(3) An administrative hearing shall be conducted by an administrative hearing officer assigned by the Division of Administrative Hearings, Families and Children Administrative Hearings Branch:

(a) In the county of residence for the appellant or child; or

(b) By telephone or at an alternate location, if the appellant:

1. Is unable to travel; and

2. Requests alternate hearing arrangements at least five (5) calendar days in advance of the scheduled hearing.

(4) If the appellant or authorized representative speaks a language other than English, the cabinet shall ensure that interpreter services are provided for the administrative hearing.

(5) Child support staff shall schedule and hold an informal interview or conference with an aggrieved individual:

(a) Within ten (10) calendar days of receiving the individual's hearing request;

(b) Prior to an administrative hearing being scheduled; and

(c) To attempt resolution of the dispute.

(6) If the informal conference does not resolve the issue, the hearing request shall be sent to the Families and Children Administrative Hearings Branch as specified in Section 2 of this administrative regulation for scheduling.

Section 2. Request for a Hearing. (1) An individual shall request an administrative hearing by:

- (a) Completing and submitting a CS-180, Request for Administrative Hearing;
- (b) Submitting a written request; or
- (c) Making an oral request, which is then transferred into a written request within the timeframes specified in subsection (4) of this section.
- (2) An administrative hearing request shall be submitted to the:
  - (a) Child support contracting official's office in the appellant's county of residence; or
  - (b) Division of Child Support's central office.
- (3) The count of days specified in subsection (4) of this section shall begin from the date of:
  - (a) Issuance, if the notice is sent by first class mail; or
  - (b) Receipt, if the notice is personally served or sent by certified mail.
- (4) A written request for an administrative hearing shall be considered timely if received by the cabinet within:
  - (a) Ten (10) calendar days of:
    - 1. An income withholding notice;
    - 2. A notice of intent to boot a vehicle, in accordance with KRS 205.745(9); or
  - 3. A notice of intent to request a credit report, in accordance with KRS 205.7685;
  - (b) Fifteen (15) calendar days of a notice of withholding from unemployment insurance, pursuant to KRS 341.392 and 341.420;
  - (c) Twenty (20) calendar days of:
    - 1. An initial notice of monthly support obligation, in accordance with KRS 405.440(4);
    - 2. An order to withhold assets, in accordance with KRS 405.490(4);
    - 3. A request for denial or suspension of a license or certificate;
    - 4. A lien notice, in accordance with KRS 205.745(6); or
    - 5. A notice to place the obligor's name on the delinquent list; or
  - (d) Thirty (30) calendar days of a:
    - 1. Modified notice of monthly support obligation, in accordance with KRS 405.450(5);
    - 2. Notice that an obligation amount was reviewed without change, in accordance with KRS 405.450(5); or
    - 3. Notice regarding the collection of past-due support, in accordance with KRS 205.769.
- (5) In accordance with KRS 205.712(13), an individual shall be granted an administrative hearing based upon a mistake in fact, such as an incorrect:
  - (a) Person identified as an obligor; or
  - (b) Current or past due support obligation.
- (6) An appellant or authorized representative may withdraw an administrative hearing request by submitting a written request to the:
  - (a) Families and Children Administrative Hearings Branch, as specified in this section; or
  - (b) Child support office that accepted the original request for an administrative hearing.

Section 3. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge an administrative hearing request.

- (2) A notice of an administrative hearing shall:
  - (a) Comply with the requirements of KRS 13B.050(3);
  - (b) Specify the name, address, and phone number of the person to notify if an appellant is unable to attend the scheduled hearing; and
  - (c) Specify that the hearing request shall be dismissed if an appellant or the authorized representative fails to appear for an administrative hearing without good cause as specified in Section 5 of this administrative regulation.
- (3) Pursuant to KRS 405.450(1), the cabinet shall schedule an

administrative hearing within sixty (60) calendar days of an individual's hearing request.

(4) An administrative hearing shall be conducted in accordance with KRS 13B.080 and 13B.090.

(5) An individual that fails to appear for a scheduled hearing shall receive notification to provide good cause within ten (10) calendar days.

Section 4. Denial or Dismissal of an Administrative Hearing Request. (1) A hearing request shall be denied or dismissed if the:

- (a) Request is not based on a mistake of fact as specified in Section 2(5) of this administrative regulation;
- (b) Request is untimely and good cause, as defined in subsection (3) of this section, is:
  - 1. Not claimed; or
  - 2. Found not to exist.
- (c) Appellant submits a written request to withdraw the administrative hearing request; or
- (d) Appellant or authorized representative fails to appear for the scheduled hearing without:
  - 1. Notifying the cabinet prior to the hearing; or
  - 2. Establishing good cause for failure to appear, as defined in subsection (3) of this section.
- (2) A claim of good cause for an untimely hearing request or failure to appear at an administrative hearing shall be established within ten (10) calendar days.
- (3) Upon receipt of a good cause claim, a hearing officer shall determine if the appellant:
  - (a) Was away from home during the entire filing period;
  - (b) Is unable to read or comprehend the right to request an administrative hearing on the notice received;
  - (c) Moved, resulting in a delay in receiving or failure to receive the notice in the required time period;
  - (d) Or an immediate household member had a serious illness; or
  - (e) Was not at fault for the delay of the request, as determined by the hearing officer.
- (4) The cabinet shall notify an appellant of the dismissal of an administrative hearing request by sending a recommended order of dismissal.

Section 5. Appellant's Rights. (1) An appellant or an appellant's legal representative shall have the right to examine and copy case material pertinent to the dispute before or during the hearing process in accordance with KRS 13B.090(3).

(2) The cabinet shall release case information as specified in subsection (1) of this section to the appellant's authorized representative if the appellant provides written authorization which is:

- (a) Signed in the presence of child support staff who shall also sign as a witness; or
- (b) Notarized.
- (3) An appellant or representatives shall have the right to:
  - (a) Examine, prior to the hearing:
    - 1. The list of witnesses to be called during the hearing;
    - 2. Evidence to be presented at the hearing; and
    - 3. Other information in the cabinet's possession that pertains to the hearing;
  - (b) Present witnesses or documents to support the appellant's claim; and
  - (c) Appeal the decision of the final order of the hearing to Circuit Court within thirty (30) calendar days of the date the final order was mailed.

Section 6. Obligation Pending a Hearing or Appeal. (1) If a hearing request is based on the dispute of:

- (a) An initial notice of monthly support obligation, the obligation shall be stayed until a final order of the Commissioner of the Department for Community Based Services or designee is issued, in accordance with KRS 405.450(2); or
- (b) The findings of a modification review of an administratively established obligation, the amount of the existing obligation shall be:
  - 1. Enforceable; and
  - 2. Paid by the obligor pending receipt of the final order.

(2) If the action taken on behalf of the Division of Child Support is:

- (a) Upheld, the obligation amount shall be retroactive to the effective date on the notice of monthly support obligation; or
- (b) Found to be incorrect, the cabinet shall return to the obligor any overpayment made since the date the administrative hearing was requested.
- (3) If an appellant files an appeal of the final order with the Circuit Court, the appellant shall be obligated to pay the amount listed on the notice of monthly support obligation while the appeal is pending.

Section 7. Recommended Order. (1) After the hearing has concluded, the hearing officer shall draft a recommended order which:

- (a) Summarizes the facts of the case;
- (b) Specifies the address where a party to the hearing may send an exception to the recommended order; and
- (c) Identifies the:
  - 1. Findings of fact;
  - 2. Conclusions of law;
  - 3. Supporting evidence; and
  - 4. Applicable state and federal laws and regulations.
- (2) In accordance with KRS 13B.110, the hearing officer shall issue the recommended order to the Commissioner of the Department for Community Based Services or designee within sixty (60) calendar days of the close of the hearing record.
- (3) A copy of the recommended order shall be sent to the:
  - (a) Appellant or representative;
  - (b) Child support staff that attended the administrative hearing; and
  - (c) Designated staff of the Division of Child Support's central office.

Section 8. Written Exceptions. (1) If a party to the hearing disagrees with the recommended order, the party may file a written exception with the Commissioner or designee.

- (2) A written exception shall:
  - (a) Be filed within fifteen (15) calendar days of the date the recommended order was mailed;
  - (b) Be based on facts and evidence presented at the hearing;
  - (c) Not refer to evidence that was not introduced at the hearing; and
  - (d) Be sent to the other parties that attended the administrative hearing.

Section 9. Final Order. (1) A final order shall be issued:

- (a) In accordance with KRS 13B.120;
- (b) By the commissioner or designee on behalf of the cabinet; and
- (c) Within ninety (90) calendar days of the recommended order, unless the recommended order is remanded in accordance with KRS 13B.120(4).
- (2) If the final order differs from the recommended order, the final order shall include findings and conclusions different from those in the recommended order pursuant to KRS 13B.120(3).

Section 10. Incorporation by Reference. (1) "CS-180, Request for Administrative Hearing", edition 3/08, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK A. WASHINGTON, Commissioner  
TOM EMBERTON, JR. Secretary

APPROVED BY AGENCY: December 10, 2007  
FILED WITH LRC: December 12, 2007 at 4 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2008 at 9 a.m. in the Health Services Board Room, on the first floor of the Health Services Building, 275 East Main Street,

Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the administrative hearing procedures used by the Cabinet in the administration of the Child Support Program.
  - (b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform standards for conducting administrative hearings related to the Child Support Program.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under 45 C.F.R. 303.35 and KRS Chapter 13B to provide an administrative hearing process for Child Support Program recipients who have complaints regarding their child support cases.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a uniform administrative hearing process to be used by the cabinet in the administration of the Child Support Program.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
  - (b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
  - (c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
  - (d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Custodial parents, noncustodial parents, nonparental custodians, DCS staff, contracting official staff, hearing officers employed by the Cabinet, and employers of obligors have the potential to be affected by this administrative regulation. Currently, there are approximately 334,663 open child support cases in Kentucky, and on average, the cabinet conducts approximately 10 child support related administrative hearings per year.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
  - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation establishes administrative hearing processes for entities listed in item (3). The administrative hearing processes provide the individuals in Kentucky child support cases with an opportunity to dispute mistakes of fact.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This administrative regulation will not impose any costs to impacted entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Aggrieved child support participants will be granted an administrative hearing and given the opportunity to dispute mistakes of fact regarding their child support case and to file exceptions to the hearing recommendation prior to the final order being entered.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional funding is required.

(b) On a continuing basis: No additional funding is required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for this administrative regulation will be State General Funds and Child Support Federal Funds. The funding has been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no fees and no increase in funding for this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied, as this administrative regulation will be applied in a like manner on a statewide basis.

years.

(c) How much will it cost to administer this program for the first year? The child support program has been operational for numerous years. This administrative regulation will not require any additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? The child support program has been operational for numerous years. This administrative regulation will not require any additional costs in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 303.35

2. State compliance standards. KRS Chapter 13B, 194A.050(1), 205.712, 405.450

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 303.35

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS Chapter 13B is more specific than the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Child Support and Division of Administrative Hearings, both within the Cabinet for Health and Family Services, and the Division of Child Support's contracting officials will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B.170, 194A.050(1), 205.712, 405.450, 45 C.F.R. 302.10, 303.35

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The child support program has been operational for numerous years and does not directly generate any revenue. This administrative regulation will not generate any additional revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The child support program has been operational for numerous years and does not directly generate any revenue. This administrative regulation will not generate any additional revenue in subsequent



ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
Minutes of December 10, 2007 Meeting

The December meeting of the Administrative Regulation Review Subcommittee was held on Monday, December 10, 2007 at 10:00 a.m., in Room 154 of the Capitol Annex. Representative Robert Damron called the meeting to order, the roll call was taken. The minutes of the November 7, 2007 meeting were approved.

**Present were:**

**Members:** Senators Joey Pendleton, Richard "Dick" Roeding and Gary Tapp; and Representatives Robert Damron, Danny Ford, Jimmie Lee and Ron Weston.

**LRC Staff:** Dave Nicholas, Donna Little, Kara Daniel, Emily Harkenrider, Laura Milam, Emily Caudill, Jennifer Beeler, Laura Napier, and Ellen Steinberg.

**Guests:** Alicia Sneed, Dr. Marilyn Troupe, Mike Carr, Education Professional Standards Board; Laura Ferguson, Angela Robinson, Finance and Administration Cabinet; Andrew Hartley, Glenn Oldham, Allen Wilson, Governor's Office for Local Development; Michael Burleson, Kentucky Board of Pharmacy; Jonathan Buckley, David Cox, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors; Nathan Goldman, Kentucky Board of Nursing; Becky Klusch, Kentucky board of Physical Therapy, Diane Fleming, Jan Gordon, Claude Wagner, Kentucky State Board for Proprietary Education; John Brunjes, Morgain Sprague, Kentucky Department of Fish and Wildlife Resources, Katie Smith, Hollie Spade, Catherine Staib, Kentucky Economic Development Finance Authority; Graham Gray, Karen Howard, Justice and Public Safety Cabinet; Tamela Biggs, Larry Moore, Education Cabinet; David Stumbo, Kentucky Department of Labor; Randy Azbill, Kentucky Office of Insurance; John Forgy, John Veitch, Jim Gates, Jamie Haydon, Kentucky Horse Racing Authority; Tim House, Michael Peck, David Reichert, Office of Housing, Buildings and Construction, Stephanie Brammer-Barnes, Van Ingram, Office of Inspector General; Molly Clouse, Maureen Fitzgerald, Sandy Silver, Department for Mental Health and Mental Retardation Services; Art Rockwood, John Shupp, W. Edward McCracken, Martin Maline, Carol Kay Hughes.

**The Administrative Regulation Review Subcommittee met on Monday, December 10, 2007 and submits this report:**

**EDUCATION PROFESSIONAL STANDARDS BOARD: General Administration**

16 KAR 1:010. Standards for certified school personnel. Alicia Sneed, director of legal services; Mike Carr, director of certification; and Dr. Marilyn Troupe, director of educator preparation, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Teaching Certificates**

16 KAR 2:010. Kentucky teaching certificates.

In response to a question by Co-Chair Roeding, Mr. Carr stated that the master's program was redesigned to grant a "teacher leader" endorsement on the certificate of individuals who successfully completed the program. That endorsement allowed teachers to work with other teachers as coaches, consultants, and resource teachers.

Dr. Troupe stated that a teacher who already had a master's degree would also be able to get the endorsement. She stated that the master's program was designed through collaboration between the universities and the local districts and that this administrative regulation would not create any delay and was supported by the universities.

A motion was made and seconded to approve the following amendments: to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Certification Procedures**

16 KAR 4.010. Qualifications for professional school positions.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 5 and 6 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 24 to correct a cross-reference citation to another administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

**Education Preparation**

16 KAR 5:010. Standards for accreditation of educator preparation units and approval of programs.

In response to questions by Senator Tapp, Co-Chair Roeding, Co-Chair Damron, and Senator Pendleton, Dr. Troupe stated that a university or private vendor could follow the guidelines in this administrative regulation and become accredited to provide teacher education in Kentucky in approximately one (1) year. A university or private vendor in another state could provide online training in Kentucky without becoming accredited but was required to become accredited in order to have a physical presence in Kentucky. She stated this did not affect anyone currently working or teaching in the state.

Ms. Sneed stated that the new standards would become effective later in 2008 in order to allow time for individuals to complete a program they were already enrolled in and choose a future program that would meet the new requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 2 to correct statutory citations; and (2) to amend Sections 3, 5, 6, 9, 12, 13, 16, 21, 22, 26, 27, and 28 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Advanced Certification and Rank**

16 KAR 8:022. Repeal of 16 KAR 8.021.

A motion was made and seconded to approve the following amendments: to amend Sections 2 to 6 to delete provisions that repeated Section 1 of this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

**FINANCE AND ADMINISTRATION CABINET: State Tax Increment Financing Commission: Tax Increment Financing**

103 KAR 50:020 & E. Application for state participation in tax increment financing projects. Laura Ferguson, staff attorney, represented the cabinet.

In response to a question by Co-Chair Roeding, Ms. Ferguson stated that applicants understood the new application and that staff were available to answer any questions the applicants had.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations, and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 50:030 & E. Commercially reasonable limits on financing costs.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 1 to specify that the bond index is the Bond Buyer 25 Revenue Muni Bond Index. Without objection, and with agreement of the agency, the amendments were approved.

**103 KAR 50:040 & E. General administration.**

In response to a question by Co-Chair Roeding, Ms. Ferguson stated that the cabinet had worked with applicants when amending this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**GENERAL GOVERNMENT: Governor's Office for Local Development: Uniform Financial Information Report**

109 KAR 13:010. Uniform financial information report. Andrew Hartley, staff attorney; Glenn Oldham, local government branch manager; and Allen Wilson, general counsel, represented the office.

In response to a question by Co-Chair Roeding, Mr. Oldham stated that all units of local government and special districts were required to submit the report, but school boards were not.

In response to a question by Senator Tapp, Mr. Oldham stated that there was no training available for completing the report but that the office was working with the League of Cities to develop statewide training.

**Kentucky Board of Pharmacy: Board**

201 KAR 2:040. Registration of pharmacist interns. Mike Bursleson, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend section 8 to delete a date that is no longer needed; and (2) to amend Sections 6 and 9 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Kentucky State Board of Licensure for Professional Engineers and Land Surveyors: Board**

201 KAR 18:040. Fees. David Cox, executive director, and Jonathan Buckley, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**201 KAR 18 072. Experience.**

In response to questions by Co-Chair Roeding, Mr. Cox stated that credit for experience prior to graduation was eliminated because it created a licensing reciprocity problem with Indiana and Illinois, which did not grant credit for that experience. He stated that only about one-half of applicants for such credit received it. He stated that four years of experience after graduation was required in order to become certified.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to correct minor drafting errors. Without objection, and with agreement of the agency, the amendments were approved.

**201 KAR 18:196. Continuing Professional Development for Engineers.**

In response to a question by Co-Chair Roeding, Mr. Cox stated that the office had taken steps to publicize the new requirements for continuing education and would continue to do so.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct a minor drafting error; (2) to amend Section 3 to include accepted methods of obtaining PDH units; and (3) to amend Sections 1 through 6, and 8 through 10 to comply with the formatting and drafting requirements of KRS Chap-

ter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Nursing: Board**

201 KAR 20:470. Dialysis technician credentialing requirements and training program standards. Nathan Goldman, general counsel, represented the board.

In response to a question by Co-Chair Roeding, Mr. Goldman stated that this administrative regulation clarified when out-of-state dialysis technicians needed to obtain Kentucky credentials.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Physical Therapy: Board**

201 KAR 22:045. Continued competency requirements and procedures. Becky Klusch, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to comply with the formatting and drafting requirements of KRS Chapter 13A; and (2) to incorporate by reference the required form. Without objection, and with agreement of the agency, the amendments were approved.

**Kentucky State Board for Proprietary Education: Board**

201 KAR 40:020. Standards for Approval of Associate Degree Programs. Claude Wagner, director; Diane Fleming, deputy attorney general; and Jan Gordon, executive director of Spencerian College, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend the material incorporated by reference to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

**201 KAR 40.025. Fees.**

In response to a question by Co-Chair Roeding, Ms. Gordon stated that the fees remained the same.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend the STATUTORY AUTHORITY paragraph and the material incorporated by reference to make technical corrections; and (3) to amend Sections 1 to 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**201 KAR 40.027. School Record Keeping Requirements.**

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**201 KAR 40:030. Procedures for Hearings.**

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 5 to correct statutory citations, (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220, (3) to amend Sections 1 to 6 to comply with the drafting

and format requirements of KRS Chapter 13A; and (4) to amend the material incorporated by reference to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

**201 KAR 40:150. Bond Requirements for Agents and Schools.**

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct statutory citations and to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Sections 1, 2, and 4 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend the material incorporated by reference to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

**201 KAR 40:155. School closing process.**

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to incorporate by reference the Board for Proprietary Education Records Retention Schedule Recommendation. Without objection, and with agreement of the agency, the amendments were approved.

**201 KAR 40:160. Transfer of ownership; change of location; change of name; revision to existing programs.**

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to make technical corrections; (2) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**COMMERCE CABINET: Kentucky Department of Fish and Wildlife Resources: Game**

**301 KAR 2:225 & E.** Dove, wood duck, teal, and other migratory game bird hunting. Morgain Sprague, general counsel, and John Brunjes, wildlife biologist, represented the department.

**CABINET FOR ECONOMIC DEVELOPMENT: Kentucky Economic Development Finance Authority: Authority**

**307 KAR 1:040 & E.** Application process for incentives for energy independence. Catherine Staib, assistant general counsel, represented the authority.

In response to questions by Co-Chair Roeding, Ms. Staib stated that this administrative regulation established application fees of \$1000 plus one-fourth of one (1) percent of the incentive up to a maximum of \$50,000. She stated this fee was higher than other fees charged due to the complexity of the program and the twenty-five (25) year duration of monitoring. She stated the authority would have to work with other programs to determine whether the applicant's program was viable and whether it brought a return to the state. She stated the application fee was \$500 more than other programs and that no question had been raised about the fee by the applicants.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend Section 1 to insert a definition of "carbon capture ready;" (3) to amend Section 4(3) to clarify that payments for professional services resulting from the application are paid through, instead of to, the Authority; and (4) to amend Sections 1, 2, 4, 5, 6, and 7 to comply with the draft-

ing and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of Kentucky State Police**

**Law Enforcement Officers Safety Act of 2004**

**502 KAR 13:010.** Application for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably-retired elected or appointed peace officers. Karen Howard, attorney, and Graham Gray, administrative branch manager, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 5 and 6 to correct citations. Without objection, and with agreement of the agency, the amendments were approved.

**502 KAR 13:030.** Range qualifications for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

In response to questions by Co-Chair Roeding, Mr. Gray stated that this administrative regulation required the range qualification form to be delivered to the applicant rather than to the department to reduce the risk of its loss. He stated they had made law enforcement groups aware of the changes and they would post it on the state police Web site once the administrative regulations were effective.

In response to questions by Co-Chair Damron, Mr. Gray stated that, in response to a comment from a retired FBI agent, they had revised the application requirements to allow a copy of an affidavit as proof of retirement, rather than an original affidavit. He stated that, under federal law, retired officers had to meet the same range qualifications as active law enforcement officers which was to re-qualify once every twelve (12) months.

A motion was made and seconded to approve the following amendments: to amend Section 3 to make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

**502 KAR 13:040.** Issuance, expiration, and renewal of certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

In response to questions by Co-Chair Damron, Mr. Gray stated that law enforcement organizations were aware of the changes and that the department had addressed their concerns when amending this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to include a new statutory citation; (2) to insert a definition for "license" to clarify that a license is the documentation of the approved certification; and (3) to amend Sections 1 to 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**502 KAR 13:050.** Replacement of licenses to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

A motion was made and seconded to approve the following amendments: (1) to insert a definition for "license" to clarify that a license is the documentation of the approved certification; and (2) to amend Section 2 to comply with the format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**502 KAR 13:060.** Change of personal information regarding certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for elected or appointed peace officers who are honorably retired.

A motion was made and seconded to approve the following amendments: (1) to amend the title for consistency with the other titles in this chapter; (2) to insert a definition for "license" to clarify that a license is the documentation of the approved certification; and (3) to amend Section 2 to comply with the format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 13.070. Applicant photograph requirements for certification to carry concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

A motion was made and seconded to approve the following amendments: (1) to amend the title for consistency with the other titles in this chapter; (2) to insert a definition for "license" to clarify that a license is the documentation of the approved certification; and (3) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 13.080. Incomplete application for certification to carry concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for elected or appointed peace officers who are honorably retired.

A motion was made and seconded to approve the following amendments: (1) to amend the title for consistency with the other titles in this chapter; (2) to insert a definition for "license" to clarify that a license is the documentation of the approved certification; and (3) to amend Sections 1 to 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **EDUCATION CABINET: Office of Employment and Training: Unemployment Insurance**

787 KAR 1.090. Unemployed worker's reporting requirements. Larry Moore, policy analyst, and Tamela Biggs, attorney, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 2(2) to specify that the applicant shall provide picture identification and valid proof of the worker's Social Security number from the Social Security administration. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:140. Unemployment insurance fund payments.

787 KAR 1:230. Date of receipt of documents defined.

#### **ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Labor Occupational Safety and Health**

803 KAR 2:310. Medical services and first aid. David Stumbo, health standards specialist, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to delete references to a federal regulation that is not applicable to this administrative regulation; and (2) to amend Section 2 to correct a typographical error. Without objection, and with agreement of the agency, the amendments were approved.

#### **Office of Insurance: Health Insurance Contracts**

806 KAR 17:180 & E. Standard health benefit plan. Randy Azbill, division director, represented the office.

#### **Office of Housing, Buildings and Construction: Elevator Safety**

815 KAR 4.010. Annual inspection of passenger elevators. David Reichert, general counsel, Tim House, director, and Michael Peck, chief elevator inspector, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 3 to specify the appli-

cable sections of the ASME A17.1-2004; (2) to amend Section 3 to specify the edition dates of the material incorporated by reference; and (3) to amend Section 2 to comply with the drafting requirements of KRS 13A.222. Without objection, and with agreement of the agency, the amendments were approved.

#### **Kentucky Building Code**

815 KAR 7:110. Criteria for expanded local jurisdiction.

A motion was made and seconded to approve the following amendments: to amend Section 1 to correct two references to building inspectors level III, rather than certified plans and specifications inspectors. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 7:120. Kentucky Building Code.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 5 to correct the edition date of the material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

#### **Standards of Safety**

815 KAR 10.060. Kentucky standards of safety.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Plumbing**

815 KAR 20:020. Parts or Materials list.

A motion was made and seconded to approve the following amendments: to amend Section 5 to require a water or air test rather than a five (5) pound air test of its equivalent and comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20.030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 3, 5, and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20.032. Continuing Education Requirements for Licensed Plumbers.

In response to a question by Co-Chair Roeding, Mr. House stated that a letter was sent to all licensed plumbers informing them of the new continuing education requirements.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 4, and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:034. Requirements for approval of continuing education courses and providers.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 3, 4, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:090. Soil, waste, and vent systems.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 6, 7, 35, and 36 to comply with

the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Electrical Inspectors**

815 KAR 35.051. Repeal of 815 KAR 35.050.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Office**

906 KAR 1:160. Monitoring system for products containing ephedrine, pseudoephedrine, or phenylpropanolamine. Van Ingram represented the office of drug policy and Stephanie Brammer-Barnes, regulations coordinator, represented the inspector general.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to correct the branch name; (2) to amend Sections 1, 2, and 5 to make technical clarifications; and (3) to amend Section 6 to require compliance within thirty (30) days of the date that a pharmacy has access to the KEMPT system after the effective date of this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the next meeting of the Subcommittee:

**FINANCE AND ADMINISTRATION CABINET: State Tax Increment Financing Commission: Tax Increment Financing**

103 KAR 50:050 & E. Incremental revenues for income and limited liability entity taxes.

**GENERAL GOVERNMENT: Kentucky Real Estate Commission: Commission**

201 KAR 11:170. Private school and course approval.

201 KAR 11:175. Prelicense and continuing education certification requirements and approval process; withdrawal of approval; approved course categories for. Mandatory prelicense instructor continuing education requirements, exemptions, extensions, and waivers; noncompliance-procedural requirements for; instructor training program and provider requirements; monitoring.

201 KAR 11:210. Licensing, education, and testing requirements.

201 KAR 11:230. Mandatory continuing education, instructor requirements; out-of-state requirements; maintaining records; and actions for failure to comply.

201 KAR 11:240. Distance education, and education via interactive television-requirement, generally; exemptions; course criteria; course provider requirements.

201 KAR 11:450. Broker management course.

**COMMERCE CABINET: Kentucky Department of Fish and Wildlife Resources: Licensing**

301 KAR 5:100. Interstate Wildlife Violators Compact.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department for Environmental Protection: Division of Air Quality: Attainment and Maintenance of the National Ambient Air Quality Standards**

401 KAR 51:001 & E. Definitions for 401 KAR Chapter 51.

401 KAR 51:017 & E. Prevention of significant deterioration of air quality.

401 KAR 51:052 & E. Review of new sources in or impacting upon nonattainment areas.

**Permits, Registrations, and Prohibitory Rules**

401 KAR 52:001 & E. Definitions for 401 KAR Chapter 52.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Class D and Class C Felons**

501 KAR 2:020. Definitions for 501 KAR Chapter 2.

501 KAR 2:030. Administration.

501 KAR 2:040. Waivers.

501 KAR 2:050. Transfer Request.

501 KAR 2:060. Procedures for housing of Class D and Class C felons.

501 KAR 2:070. Work Release.

**Jail Standards for Full-service Facilities**

501 KAR 3:010. Definitions for 501 KAR Chapter 3.

501 KAR 3:020. Administration; management.

501 KAR 3:040. Personnel.

501 KAR 3:050. Physical Plant.

501 KAR 3:060. Security; Control.

501 KAR 3:070. Safety; emergency procedures.

501 KAR 3:080. Sanitation; hygiene.

501 KAR 3:090. Medical Services.

501 KAR 3:100. Food Services.

501 KAR 3:130. Prisoner programs; services.

501 KAR 3:140. Prisoner rights.

**Jail Standards for Restricted Custody Center Facilities**

501 KAR 7:040. Personnel.

501 KAR 7:080. Sanitation; hygiene.

501 KAR 7:090. Medical Services.

501 KAR 7:100. Food Services.

**Kentucky Law Enforcement Council: General Training Provision**

503 KAR 3:110. Certified Court Security Officers academy trainee requirements; misconduct; penalties; discipline procedures.

**TRANSPORTATION CABINET: Department of Highways: Traffic**

603 KAR 5:320. Safety in highway work zones.

**EDUCATION CABINET: Kentucky Board of Education: Office of Chief State School Officer**

701 KAR 5:130. Drug Testing of Teachers Involved in Illegal Use of Controlled Substances.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Workers' Claims**

803 KAR 25:096. Selection of physicians, treatment plans and statements for medical services.

**Department of Public Protection: Kentucky Horse Racing Authority: Thoroughbred Racing**

810 KAR 1:027. Entries, subscriptions, and declarations. John Forgy, general counsel; John Veitch, chief state steward; and Jamie Haydon, director of incentives and development, represented the authority. Martin Maline, executive director of the Horsemen's Benevolent and Protective Association, appeared in opposition to this administrative regulation.

Mr. Maline stated that his association had two concerns with the changes to this administrative regulation. He stated that the first issue was that it prevented the entry of multiple horses trained by the same trainer in a single race. He stated that multiple owners may use the same trainer for their horses and the proposed change to this administrative regulation would allow the trainer to choose which horse could enter a race. He stated that owners invested a tremendous amount of money to get a horse trained and developed to compete and yet could be barred from entering the horse in a particular race because he used the same trainer as that of another horse.

He stated that the association's second concern was with the increase in the number of days on the veterinarian's list for a horse scratched from a race from six (6) days to nine (9). He stated that a horse may be scratched from a race due to a temporary problem, such as a minor case of colic, in which case, nine (9) days was too long to prohibit the horse from racing.

Mr. Veitch stated that the prohibition of multiple entries with the same trainer was intended to promote a level playing field that was fair to all owners. He stated that the increase in the number of days on the veterinarian's list was intended to discourage the withdrawal of a horse from a race without reason and to maintain larger fields in races.

In response to questions by Senator Pendleton, Mr. Veitch stated that the association wanted to prevent the possibility that a trainer could manipulate the outcome of a race, which became

more likely the more entries a trainer had. He stated that this prohibition would not affect the Kentucky Derby because its entries were established by earnings.

In response to questions by Senator Tapp, Mr. Veitch stated that the association had no evidence that a trainer had manipulated a race. He stated that the association wanted to maintain the integrity of racing and avoid negative public perceptions. He stated there had been no public outcry on the issue.

Senator Tapp stated that any problem that occurred could be addressed through discipline of the trainer, not by penalizing the owners.

In response to questions by Representative Weston, Mr. Veitch stated that generally, trainers with larger stables had established themselves. He stated that a trainer could be wagering on horses he trained and that a win by one horse against a horse with better odds would create a perception that the trainer affected the outcome of the race to increase his winnings from wagering.

Representative Weston stated that this administrative regulation could affect the ability of horse owners and trainers to earn a living because of things that might never happen.

In response to questions by Senator Tapp and Representative Lee, Mr. Veitch stated that if there were more entries for a race than the maximum, the entries accepted were determined by lot.

Senator Pendleton stated that the proposed restriction could lead owners to change the names of trainers of record in order to get their horses into races.

In response to a question by Representative Weston, Mr. Veitch stated that a horse on the veterinarian's list stayed on the list the full time and there was no mechanism to remove the horse from the list sooner.

#### 810 KAR 1:090. Kentucky Thoroughbred Development Fund.

A motion was made and seconded to defer consideration of 810 KAR 1:027 and 810 KAR 1:090 until the Subcommittee's January meeting. Mr. Forgy stated that the department would agree to defer these administrative regulations. Without objection and with agreement of the agency, these administrative regulations were deferred.

#### **CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Secretary: E-Health**

900 KAR 7:020 & E. Kentucky e-Health Corporation.

#### **Department for Mental Health and Mental Retardation Services: Division for Mental Health and Substance Abuse: Mental Health**

908 KAR 2:220. Peer Specialist Services. Sandy Silver, peer specialist consultant, represented the division. Maureen Fitzgerald, director of protection and advocacy, appeared in opposition to this administrative regulation. Molly Clouse, peer specialist, appeared in support of this administrative regulation.

Ms. Fitzgerald stated this administrative regulation was very positive and her agency supported it except for one provision. She stated that the requirement that a peer specialist have a high school diploma or complete a GED program should be deleted. She stated there was a real need for peer specialists in Kentucky in order to make access to mental health services more affordable. She stated that a person could be an effective peer specialist without having a diploma or GED certificate. She stated that a 2006 study showed that only nine (9) of fourteen (14) states that had programs required peer specialists to have a diploma or GED certificate.

Ms. Silver stated the division would like to keep the requirement to encourage qualified individuals to obtain a diploma or GED certificate before becoming a peer specialist. She stated that a peer specialist worked on a team with mental health professionals, which required some level of literacy. She stated that a diploma or GED certificate is a condition of employment for all employees at the mental health centers where they worked.

Ms. Clouse stated that, because it was a new program, peer specialists faced barriers to acceptance by other members of the mental health team. She stated that holding a diploma or GED

certificate gave peer specialists a level of credibility with other team members.

Representative Lee stated that requiring a diploma could prevent a lot of qualified individuals from becoming peer specialists. He stated that literacy and other issues could be addressed through training to ensure the individuals were sophisticated and qualified enough to be effective.

Ms. Silver stated that peer specialists should have a diploma because they would be an employee of the system and part of the treatment team. She stated their program assisted individuals in obtaining a diploma or GED certificate in order to become qualified and that the requirement motivated them to obtain their diplomas or GED certificate.

Co-Chair Roeding stated that qualified individuals should not be overlooked but individuals should be encouraged to obtain a diploma or GED certificate.

Co-Chair Damron stated that a high priority should be placed on encouraging individuals to obtain high school diplomas or GED certificates but that there may not be an adequate number of individuals who meet that requirement.

A motion was made and seconded to defer consideration of this administrative regulation until the Subcommittee's January meeting. Ms. Silver stated that the department agreed to defer this administrative regulation. Without objection and with agreement of the agency, this administrative regulation was deferred.

#### **Department of Community Based Services: Day Care**

922 KAR 1:390. Standards for residential child-caring facilities.

#### **Other Business:**

Senator Tapp made a motion that Subcommittee staff write a letter to the Kentucky Board of Medical Licensure requesting information about their guidelines for physicians regarding advanced registered nurse practitioners (ARNP), that the information be submitted to Subcommittee staff within thirty (30) days and that, if necessary, the board be invited to the Subcommittee's next scheduled meeting to discuss the information and the possible need for regulatory or statutory changes. The motion was seconded and passed without objection.

The Subcommittee adjourned at 12:10 until January 2008.



OTHER COMMITTEE REPORTS

**COMPILER'S NOTE:** In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON SENIORS, VETERANS,  
MILITARY AFFAIRS, AND PUBLIC PROTECTION  
Meeting of November 1, 2007**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection for its meeting of November 1, 2007, having been referred to the Committee on September 11, 2007, pursuant to KRS 13A.290(6):

106 KAR 2.020 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 1, 2007 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.



## **CUMULATIVE SUPPLEMENT**

### **Locator Index - Effective Dates**

**G - 2**

The Locator Index lists all administrative regulations published in VOLUME 34 of the Administrative Register from July, 2007 through June, 2008. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 33 are those administrative regulations that were originally published in VOLUME 33 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2007 bound Volumes were published.

### **KRS Index**

**G - 12**

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 34 of the Administrative Register.

### **Subject Index**

**G - 21**

The Subject Index is a general index of administrative regulations published in VOLUME 34 of the Administrative Register, and is mainly broken down by agency.

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	33 Ky.R. Page No.	Effective Date	Regulation Number	33 Ky.R. Page No.	Effective Date
<b>VOLUME 33</b>					
The administrative regulations listed under VOLUME 33 are those administrative regulations that were originally published in Volume 33 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2007 bound Volumes were published.					
<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b>			102 KAR 1:030		
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)			Amended	3427	(See 34 Ky.R.)
31 KAR 5.010E	3325	4-2-07	102 KAR 1:036		
Replaced		(See 34 Ky.R.)	Amended	3428	(See 34 Ky.R.)
201 KAR 20 070E	3586	5-11-07	102 KAR 1:038		
Replaced	4205	8-16-07	Amended	3430	(See 34 Ky.R.)
301 KAR 2 221E	1493	11-1-06	102 KAR 1:175		
301 KAR 2.222E	1494	11-1-06	Amended	3431	(See 34 Ky.R.)
301 KAR 2 223E	1500	11-1-06	103 KAR 20 500	1013	
502 KAR 32:010	3327	4-12-07	106 KAR 5:005	3113	
Replaced		(See 34 Ky.R.)	As Amended	3597	7-6-07
806 KAR 17:540E	1233	10-13-06	106 KAR 5:010	3114	
806 KAR 17:545E	1235	10-13-06	As Amended	3598	7-6-07
806 KAR 17:555E	1238	10-13-06	106 KAR 5:020	3116	
902 KAR 45:150E	1502	11-14-06	As Amended	3599	7-6-07
907 KAR 1:025E	3143	3-1-07	106 KAR 5:030	3118	
Replaced	4186	7-6-07	As Amended	3600	7-6-07
907 KAR 1:155			106 KAR 5 040	3120	
Resubmitted	1058	9-1-06	As Amended	3601	7-6-07
907 KAR 3.010E			201 KAR 2:250		
Resubmitted	1062	9-1-06	Amended	4201	(See 34 Ky.R.)
908 KAR 2:190E	1507	10-17-06	201 KAR 2:260	3305	
			As Amended	3602	6-20-07
			201 KAR 9:460	4269	(See 34 Ky.R.)
			201 KAR 11:220		
			Amended	3434	8-31-07
			201 KAR 16:010		
			Amended	3238	(See 34 Ky.R.)
			201 KAR 16.060		
			Amended	3240	
			201 KAR 18.040		
			Amended	4203	8-31-07
			201 KAR 18:111	3569	(See 34 Ky.R.)
			201 KAR 20.070		
			Amended	4205	8-16-07
			201 KAR 20.370		
			Amended	4207	8-16-07
			201 KAR 20:411		
			Amended	4209	8-16-07
			201 KAR 22 020		
			Amended	3436	8-16-07
			201 KAR 22:040		
			Amended	3438	8-16-07
			201 KAR 30:180		
			Amended	4211	(See 34 Ky.R.)
			201 KAR 36 070		
			Amended	3242	6-20-07
			202 KAR 6 020		
			Amended	4214	(See 34 Ky.R.)
			202 KAR 6 030		
			Amended	4217	(See 34 Ky.R.)
			202 KAR 6.060		
			Amended	4218	(See 34 Ky.R.)
			202 KAR 6 070		
			Amended	4220	(See 34 Ky.R.)
			202 KAR 6.100		
			Amended	4221	(See 34 Ky.R.)
			301 KAR 2.122	2831	6-13-07
			301 KAR 2.132		
			Amended	3440	(See 34 Ky.R.)
			301 KAR 2:172		
			Amended	3444	(See 34 Ky.R.)
			301 KAR 2:174		
			Repealed	3570	8-6-07
			301 KAR 2.175	3570	8-6-07
			301 KAR 2:177	3571	8-6-07
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>					
11 KAR 4:080					
Amended	3224				
As Amended	3589	7-6-07			
11 KAR 5:033					
Amended	3225				
As Amended	3589	7-6-07			
11 KAR 5.034					
Amended	3226				
As Amended	3590	7-6-07			
11 KAR 5:140					
Amended	3228	7-6-07			
11 KAR 6:010					
Amended	3230				
As Amended	3590	7-6-07			
11 KAR 16:010					
Amended	3232				
As Amended	3592	7-6-07			
11 KAR 16:070					
As Amended	3304				
	3593	7-6-07			
16 KAR 1.030					
Amended	3423	7-19-07			
16 KAR 9.080	3567	(See 34 Ky.R.)			
17 KAR 1:020	3078				
As Amended	3593	7-6-07			
31 KAR 3:010					
Amended	3235				
As Amended	3595	7-6-07			
31 KAR 4.100					
Amended	3237				
As Amended	3596				
31 KAR 5:010					
Amended	3425	(See 34 Ky.R.)			
101 KAR 2:046					
Amended	4195	(See 34 Ky.R.)			
101 KAR 2:056					
Amended	4197	(See 34 Ky.R.)			
101 KAR 2:066					
Amended	4199	(See 34 Ky.R.)			

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Regulation Number	33 Ky.R. Page No.	Effective Date	Regulation Number	33 Ky.R. Page No.	Effective Date
301 KAR 2:178			Amended	3490	(See 34 Ky.R.)
Amended	3447	8-6-07	707 KAR 1:370		
301 KAR 2:179			Amended	3492	(See 34 Ky.R.)
Repealed	3571	8-6-07	707 KAR 1:380		
301 KAR 2:185			Amended	3496	(See 34 Ky.R.)
Amended	3243		802 KAR 1:010		
As Amended	3603	6-13-07	Amended	2202	
301 KAR 2:195			Amended	3217	
Amended	3452	(See 34 Ky R.)	As Amended	4164	7-6-07
301 KAR 2:251			803 KAR 2:300		
Amended	3426		Amended	3499	(See 34 Ky.R.)
As Amended	3604	6-13-07	803 KAR 2:305		
301 KAR 3.022			Amended	3501	(See 34 Ky.R.)
Amended	3456	8-6-07	803 KAR 2:318		
301 KAR 5:030			Amended	3503	(See 34 Ky.R.)
Amended	4224	8-23-07	804 KAR 9.040		
401 KAR 57:002			Amended	3506	8-6-07
Amended	4227	(See 34 Ky.R.)	805 KAR 7.010		
401 KAR 58.025			Amended	3076	
Amended	4229	(See 34 Ky.R.)	Amended	3413	(See 33 Ky.R.)
401 KAR 60:005			805 KAR 7:100	3124	
Amended	4231	(See 34 Ky.R.)	Amended	3414	(See 33 Ky.R.)
401 KAR 60.670			805 KAR 11:001	3126	(See 34 Ky.R.)
Amended	4234	(See 34 Ky.R.)	Amended	3416	
401 KAR 63.002			805 KAR 11:010	3128	(See 34 Ky.R.)
Amended	4236		Amended	3417	
401 KAR 63:023(r)	4270		805 KAR 11:020	3130	(See 34 Ky.R.)
401 KAR 64:001	4271		Amended	3419	
401 KAR 64:005	4275		806 KAR 6.120	4290	(See 34 Ky R.)
401 KAR 64.010	4279		806 KAR 12:120	4292	(See 34 Ky.R.)
401 KAR 64:020	4283		806 KAR 12:140	4294	(See 34 Ky R.)
401 KAR 64 030	4286		806 KAR 12:150	4299	(See 34 Ky.R.)
401 KAR 64.050	4288		806 KAR 12:160	4301	(See 34 Ky.R.)
501 KAR 6 020			806 KAR 12:170	4305	(See 34 Ky.R.)
Amended	4241	(See 34 Ky.R.)	806 KAR 14.005		
501 KAR 6'030			Amended	4258	(See 33 Ky.R.)
Amended	4243	(See 34 Ky.R.)	806 KAR 15.060	4307	(See 34 Ky.R.)
501 KAR 6 070			806 KAR 15.070	4311	(See 34 Ky.R.)
Amended	4245	(See 34 Ky.R.)	815 KAR 4:010		
501 KAR 6:240			Amended	3249	
Amended	4247	(See 34 Ky.R.)	As Amended	4167	7-6-07
502 KAR 20.020			815 KAR 7:120		
Amended	4249	(See 34 Ky.R.)	Amended	3250	
502 KAR 32:010			As Amended	4168	7-6-07
Amended	3459	(See 34 Ky R.)	815 KAR 7:125		
503 KAR 1:170			Amended	3253	(See 34 Ky.R.)
Amended	4253	(See 34 Ky.R.)	815 KAR 10:060		
603 KAR 4.045			Amended	3255	
Amended	3042		As Amended	4169	7-6-07
As Amended	4162	7-6-07	815 KAR 20 015	3308	
701 KAR 5:110			As Amended	4172	7-6-07
Amended	3045	7-6-07	815 KAR 20.020		
702 KAR 7:065			Amended	3258	7-6-07
Amended	3461	(See 34 Ky R.)	815 KAR 20:078		
707 KAR 1:280			Amended	3262	
Amended	3463	(See 34 Ky.R.)	815 KAR 20:110		
707 KAR 1:290			Amended	3264	
Amended	3468		As Amended	4173	7-6-07
707 KAR 1:300			815 KAR 20.120		
Amended	3470	(See 34 Ky.R.)	Amended	3266	
707 KAR 1:310			As Amended	4174	7-6-07
Amended	3473	(See 34 Ky.R.)	815 KAR 20:130		
707 KAR 1:320			Amended	3273	
Amended	3476	(See 34 Ky.R.)	As Amended	4180	7-6-07
707 KAR 1.330			815 KAR 20:150		
Repealed	3572	11-5-07	Amended	3277	
707 KAR 1:331(r)	3572	11-5-07	As Amended	4183	7-6-07
707 KAR 1:340			815 KAR 35 060		
Amended	3480	(See 34 Ky.R.)	Amended	3279	
707 KAR 1:350			As Amended	4184	7-6-07
Amended	3488	(See 34 Ky.R.)	820 KAR 1.001		
707 KAR 1.360			Amended	3508	(See 34 Ky R.)

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	33 Ky.R. Page No.	Effective Date	Regulation Number	33 Ky.R. Page No.	Effective Date
820 KAR 1:015 Amended	3511	(See 34 Ky.R.)	902 KAR 2.080 Amended	3295	(See 34 Ky.R.)
820 KAR 1:025 Amended	3512	(See 34 Ky.R.)	902 KAR 105.040 Amendment	1733	
820 KAR 1:029 Amended	3514	8-31-07	902 KAR 105:060 Repealed	1759	10-17-07
820 KAR 1:032 Amended	3516	(See 34 Ky.R.)	902 KAR 105:061(r)	1759	10-17-07
820 KAR 1:036 Amended	3518	(See 34 Ky.R.)	902 KAR 105.070 Amendment	1736	
820 KAR 1:046 Amended	3522	(See 34 Ky.R.)	907 KAR 1.025 Amended	3297	
820 KAR 1:050 Amended	3525	(See 34 Ky.R.)	As Amended	4186	7-6-07
820 KAR 1 055 Amended	3526	(See 34 Ky.R.)	907 KAR 3.005 Amended	4259	
820 KAR 1.056 Amended	3528	8-31-07	907 KAR 3:010 Amended	4264	
820 KAR 1.057 Amended	3530	(See 34 Ky.R.)	908 KAR 3:050 Amended	3537	(See 34 Ky.R.)
820 KAR 1:058 Amended	3531	(See 34 Ky.R.)	908 KAR 3.060 Amended	3539	(See 34 Ky.R.)
820 KAR 1:120 Amended	3536	(See 34 Ky.R.)	922 KAR 1:300 Amended	3543	(See 34 Ky.R.)
900 KAR 6.050 Amended	3282	(See 34 Ky.R.)	922 KAR 1:310 Amended	3552	(See 34 Ky.R.)

## VOLUME 34

### EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

31 KAR 5:010E Replaced	12	(See 33 Ky.R.) 8-6-07
101 KAR 2:210E	1627	12-7-07
103 KAR 31:180E	1350	11-15-07
103 KAR 50.020E	531	7-31-07
103 KAR 50.030E	703	8-16-07
103 KAR 50:040E	532	7-31-07
103 KAR 50:050E	704	8-16-07
105 KAR 1:390E	534	8-15-07
106 KAR 2:020E	156	6-25-07
Replaced	707	11-1-07
201 KAR 30:190E	1628	12-14-07
301 KAR 2:221E	1351	11-14-07
301 KAR 2:222E	1354	11-14-07
301 KAR 2:225E	907	10-15-07
307 KAR 1:040E	909	10-8-07
401 KAR 51:001E	912	9-28-37
401 KAR 51.017E	924	9-28-37
401 KAR 51:052E	939	9-28-37
401 KAR 52 001E	953	9-28-37
900 KAR 7:020E	958	9-18-37
502 KAR 32.010 Replaced	27	(See 33 Ky.R.) 8-6-07
705 KAR 4 250E	1662	12-19-07
806 KAR 17:180E	537	7-13-07
806 KAR 17:545E	157	6-29-07
806 KAR 17.545E	161	6-29-07
907 KAR 1:011E	1634	11-20-07
907 KAR 1.013E	1358	11-15-07
907 KAR 1:015E	164	7-12-07
907 KAR 1 038E	1641	11-20-07
907 KAR 1.039E	1645	11-20-07
907 KAR 1 054E	1647	11-20-07
907 KAR 1.061E	1374	10-25-07
907 KAR 1.082E	1651	11-20-07
907 KAR 1:145E	167	7-12-07

907 KAR 1:160E	1653	12-5-07
907 KAR 1:170E	181	7-12-07
907 KAR 1.604E	1660	11-20-07
907 KAR 1.631E	1666	11-20-07
907 KAR 1.640E	1668	11-20-07
907 KAR 1 645E	1672	11-20-07
907 KAR 1:672E	185	7-12-07
907 KAR 1.815E	1376	11-15-07
907 KAR 1 820E	1381	11-15-07
907 KAR 1:900E	1676	11-20-07
907 KAR 3.005E	190	7-12-07
907 KAR 3:010E	195	7-12-07
907 KAR 3:090E	199	7-12-07
920 KAR 2:040E	5	6-4-07
921 KAR 2:015E	1680	12-07-07
922 KAR 1:050E	212	7-12-07
922 KAR 1:360E	216	6-28-07

### ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 3:100 Amended	93	9-10-07
11 KAR 5:001 Amended	822	
As Amended	1386	
11 KAR 5:034 Amended	824	
As Amended	1387	
11 KAR 5:145 Amended	106	9-10-07
11 KAR 5.200 Amended	1761	
11 KAR 8 030 Amended	1762	
11 KAR 8 040 Amended	1766	
11 KAR 14:080 Amended	1769	
11 KAR 16:001 Amended	1771	
11 KAR 16:010 Amended	1773	
11 KAR 16.060		



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Regulation Number	34 Ky.R. Page No.	Effective Date	Regulation Number	34 Ky.R. Page No.	Effective Date
Amended	1775		As Amended	1701	
13 KAR 2:020			103 KAR 50:040	678	
Amended	108		As Amended	1702	
Amended	590		103 KAR 50:050	890	
As Amended	961	12-7-07	105 KAR 1:180		
16 KAR 1 010			Amended	115	
Amended	1074		As Amended	541	10-5-07
As Amended	1686		105 KAR 1:200		
16 KAR 1:030		(See 33 Ky R )	Amended	117	
As Amended	9		As Amended	542	10-5-07
16 KAR 2:010			105 KAR 1:240		
Amended	1079		Amended	119	
As Amended	1687		As Amended	544	10-5-07
16 KAR 4.010			105 KAR 1 270		
Amended	1079		Amended	121	
As Amended	1689		As Amended	545	10-5-07
16 KAR 5:010			105 KAR 1:380		
Amended	1081		Amended	124	
As Amended	1690		As Amended	547	10-5-07
16 KAR 8 022	1297		105 KAR 1:390	680	
As Amended	1699		As Amended	1388	
16 KAR 9.080		(See 33 Ky R.)	106 KAR 2 020	506	
As Amended	10	7-19-07	As Amended	708	11-1-07
17 KAR 3:030	1899		109 KAR 13.010		
31 KAR 4:120			Amended	827	
Amended	826		Amended	1506	
As Amended	1388		109 KAR 15 020		
31 KAR 5 010		(See 33 Ky.R )	Amended	616	
As Amended	12	8-6-07	As Amended	968	11-20-2007
31 KAR 5:031	888	7-19-07	200 KAR 17:011 (r)	144	
31 KAR 6:030			As Amended	548	10-5-07
Amended	112		200 KAR 17:060		
As Amended	540	10-5-07	Repealed	548	10-5-07
40 KAR 4 010			201 KAR 1:160		
Amended	1777		Amended	1093	
101 KAR 1:335			201 KAR 2:040		
Amended	1517		Amended	1095	
101 KAR 2 034			As Amended	1703	
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- \* Statement of Consideration not filed by deadline
- \*\* Withdrawn, not in effect within 1 year of publication
- \*\*\* Withdrawn before being printed in Register
- (r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.



## KRS SECTION

## REGULATION

## KRS SECTION

## REGULATION

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	922 KAR 1:360	65.7071	103 KAR 50.050
	922 KAR 2:090	65.7073	103 KAR 50.020
	922 KAR 2:100	65.7075	103 KAR 50.020
	922 KAR 2:170		103 KAR 50.050
15 055	921 KAR 1:430	65.7077	103 KAR 50.050
15.380	503KAR 3.110	65.7083	103 KAR 50 020
15.380-15.404	906 KAR 1:160	65.900 - 65.925	109 KAR 13 010
15 3975	503 KAR 3:110	65.944	109 KAR 15.020
16.505 - 16.652	105 KAR 1:204	66.045	109 KAR 15.020
17	105 KAR 1:270	67A.028	501 KAR 3 010
17.165	910 KAR 1:240	67A.620	921 KAR 1:410
	922 KAR 2.002	67B.020	501 KAR 3.010
	922 KAR 2.110	68.020	109 KAR 15.020
17.180	502 KAR 14:010	68.210	109 KAR 15 020
16.576	105 KAR 1:200	68.245	109 KAR 15 020
16.577	105 KAR 1.200	68.250	109 KAR 15 020
16 578	105 KAR 1 180	68.350	109 KAR 15 020
16 601	105 KAR 1:180	69.210	501 KAR 3 020
16 645	105 KAR 1 200	72.020	501 KAR 6:050
	105 KAR 1:240	72.025	501 KAR 6:050
17.165	920 KAR 2.040		501 KAR 7:090
	922 KAR 1:470	78.510 - 78.852	105 KAR 1.204
	922 KAR 2.180		105 KAR 1.270
	922 KAR 2.090	78.545	105 KAR 1:180
	922 KAR 2 100		105 KAR 1.200
18A 030	101 KAR 2:034		105 KAR 1:240
	101 KAR 2 210	81.010	922 KAR 2:120
18A 075	101 KAR 1:335		922 KAR 2:160
18A.110	101 KAR 2 034	95.620	921 KAR 1:410
	101 KAR 2:120	95.878	921 KAR 1:410
	101 KAR 2 230	98.2	922 KAR 2:090
18A.115	101 KAR 1.335		922 KAR 2:100
18A.165	101 KAR 2.034		922 KAR 2:110
18A 225	101 KAR 2:210		922 KAR 2:120
18A.0751	101 KAR 1:335	117.015	31 KAR 4:120
18A 2254	101 KAR 2.210		31 KAR 5:031
36.470	106 KAR 2 020	117.045	31 KAR 4:120
36 474	106 KAR 2.020	117.065	31 KAR 5:031
36 476	106 KAR 2.020	117.255	31 KAR 5:031
45 237 - 45.241	922 KAR 2:120	117.265	31 KAR 6:030
	922 KAR 2:160	117.379	31 KAR 6:030
45A	920 KAR 2:040	117.381	31 KAR 6:030
46.010	109 KAR 15:020	132.020	103 KAR 8:130
46 020	109 KAR 15:020		103 KAR 8:140
61.510 - 61.705	105 KAR 1:204		103 KAR 8:150
	105 KAR 1:270	132.200	103 KAR 8:130
61.590	105 KAR 1:200		103 KAR 8:140
61.595	105 KAR 1:200		103 KAR 8:150
61.623	105 KAR 1:200	132.585	109 KAR 15.020
	105 KAR 1:240	138.510	810 KAR 1:090
61 630	105 KAR 1:240	139.515	103 KAR 31:180
61 637	105 KAR 1:390	148 021	304 KAR 1:040
61.640	105 KAR 1:180	148 051	304 KAR 1.040

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148.522	300 KAR 1:100		301 KAR 1:155
148.55	300 KAR 1:100		301 KAR 1:201
150.010	301 KAR 1:015		301 KAR 1:410
	301 KAR 1:155	154.27-010-154.27-090	307 KAR 1:040
	301 KAR 1:201	156.070	704 KAR 4:020
	301 KAR 2:221	156.160	13 KAR 2:020
	301 KAR 2:222		702 KAR 3:130
	301 KAR 1:410		702 KAR 5:080
150.025	301 KAR 1 016	156.200	702 KAR 3:130
	301 KAR 1.410	157	922 KAR 2:090
	301 KAR 2.221	157.390	16 KAR 8:022
	301 KAR 2.222	158.782	16 KAR 4:010
	301 KAR 3:022		703 KAR 5:170
150.090	301 KAR 1 015	158.808	705 KAR 4:250
	301 KAR 1 016	158 6451	16 KAR 2:010
150.120	301 KAR 1.155	158 6455	703 KAR 5:170
	301 KAR 1:201	159 030	601 KAR 13:070
	301 KAR 1:410	159 040	601 KAR 13:070
150.170	301 KAR 1:410	159.051	601 KAR 13:070
150.175	301 KAR 1:155		704 KAR 7:101
	301 KAR 1:410	159.160	16 KAR 2:010
	301 KAR 3:022		601 KAR 13:070
150.180	301 KAR 3:022	160.380	701 KAR 5:130
150.183	301 KAR 3:022	161.020	16 KAR 1:010
150.195	301 KAR 5:050		16 KAR 4 010
150.225	301 KAR 5:050		16 KAR 8.022
150.235	301 KAR 1:155	161.028	16 KAR 1'010
	301 KAR 1:410		16 KAR 2:010
	301 KAR 5:050		16 KAR 5:010
150.236	301 KAR 5:100		16 KAR 8 022
150.240	301 KAR 3 022	161.030	16 KAR 1:010
150.275	301 KAR 3 022		16 KAR 2:010
150.280	301 KAR 3.022		16 KAR 4 010
150.290	301 KAR 3 022		16 KAR 5 010
150.305	301 KAR 2:221		16 KAR 8.022
	301 KAR 2:222	161.048	16 KAR 1:010
150.330	301 KAR 2 221	161.095	16 KAR 1:010
	301 KAR 2:225	161.120	16 KAR 1.010
150.340	301 KAR 2.221	161.145	702 KAR 5:080
	301 KAR 2 222		704 KAR 4:020
	301 KAR 2.225	161.175	701 KAR 5:130
150.360	301 KAR 1:410	161.700	921 KAR 1:410
	301 KAR 2.225	161.790	701 KAR 5:130
150.440	301 KAR 1:410	164.001	13 KAR 2:020
150.445	301 KAR 1:155	164.011	13 KAR 2:020
	301 KAR 1:410	164.020	13 KAR 2:020
150.450	301 KAR 1:155	164 030	13 KAR 2:020
	301 KAR 1:140	164.357	101 KAR 2:220
	301 KAR 3:022	164.518	11 KAR 16.001
150.485	301 KAR 3:022		11 KAR 16.010
150.520	301 KAR 3.022		11 KAR 16.060
150.525	301 KAR 3 022	164.740	11 KAR 14 080
150.600	301 KAR 2:221	164.740 - 164.785	11 KAR 5:001
	301 KAR 3.022	164.744	11 KAR 3:100
	301 KAR 2 222		11 KAR 5 034
150.603	301 KAR 2:225		11 KAR 5:145
	301 KAR 3:022		11 KAR 5:200
150.620	301 KAR 1:015		11 KAR 8:030
	301 KAR 1:016		11 KAR 8.040
	301 KAR 1:410	164.748	11 KAR 3:100
	301 KAR 2:225	164.753	11 KAR 5.034
	301 KAR 3.022		11 KAR 5 200
150.625	301 KAR 1:015		11 KAR 8 030
	301 KAR 1'016	164.769	11 KAR 8 030
150.640	301 KAR 1 016		11 KAR 8.040
150.660	301 KAR 3 022	164.780	11 KAR 5:200
150.720	301 KAR 3 022		11 KAR 5:145
150.990	301 KAR 1:015	164.785	11 KAR 5:200

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164.7535	11 KAR 5 034	198B 260	815 KAR 7:120
	11 KAR 5:145	198B-400	815 KAR 4:010
	11 KAR 5 200	198B-470	815 KAR 4:010
164.7889	11 KAR 5 145	198B 480	815 KAR 4:010
164.7891	11 KAR 14.080	198B 500	815 KAR 4:010
164.945-164 947	16 KAR 5 010	198B.510	815 KAR 4:010
165A.310	201 KAR 40 020	198B-540	815 KAR 4:010
165A.340	201 KAR 40.025	198B.650-198B 689	501 KAR 13:010
165A.350	201 KAR 40 025	198B.990	815 KAR 7:120
	201 KAR 40 030	199.011	910 KAR 1:260
165A.360	201 KAR 40 025		921 KAR 2.015
	201 KAR 40.030		922 KAR 1:360
	201 KAR 40:150		922 KAR 1:390
165A.370	201 KAR 40 020		922 KAR 1:490
	201 KAR 40.027		922 KAR 2:180
	201 KAR 40 030		922 KAR 2.090
165A.400	201 KAR 40:025		922 KAR 2:110
165A.450	201 KAR 40 025	199.462	922 KAR 1 050
171.450	725 KAR 1 030	199.555	922 KAR 1 050
	725 KAR 1 061	199 557	922 KAR 1 050
174.400-174 425	601 KAR 1 025	199.640 - 199.680	922 KAR 1:360
186.040	922 KAR 2:120		922 KAR 1:390
	922 KAR 2 160		922 KAR 1 360
186.440	601 KAR 13 070	199 801	922 KAR 1 470
	704 KAR 7:101	199.892	922 KAR 2:160
186.450	601 KAR 13 070		922 KAR 2 090
186.470	601 KAR 13 070		922 KAR 2 100
186.560	601 KAR 13 070		922 KAR 2 120
186.570	921 KAR 1:410		922 KAR 2:160
189.232	603 KAR 5 320	199.894	922 KAR 2.160
189.2325	603 KAR 5 320		922 KAR 2:090
189.390	603 KAR 5 320		922 KAR 2:110
189.394	603 KAR 5 320		922 KAR 2:120
189.540	702 KAR 5 080		922 KAR 2.160
190.031	605 KAR 1:031	199 896	922 KAR 1:470
190.073	605 KAR 1 031		922 KAR 2.160
194A.050	921 KAR 2 016		922 KAR 2.090
194A.060	907 KAR 1 044		922 KAR 2:100
	910 KAR 1 160		922 KAR 2:110
	910 KAR 1 240		922 KAR 2:120
	921 KAR 2.015	199.898	922 KAR 2:160
194.700	910 KAR 1:160		922 KAR 2:180
	910 KAR 1.231		922 KAR 2:090
194A.700-729	910 KAR 1.240		922 KAR 2:100
196	501 KAR 6 060		922 KAR 2:110
	501 KAR 6:170		922 KAR 2:120
	501 KAR 6:999		922 KAR 2:160
197	501 KAR 6.060	199.8941	922 KAR 2:170
	501 KAR 6:170	199.8943	922 KAR 2:170
	501 KAR 6:999	199.896	922 KAR 2.170
198B 010	815 KAR 7:120	199.8982	922 KAR 2.160
198B 040	815 KAR 7:110		922 KAR 2:170
	815 KAR 7:120		922 KAR 2 180
198B 050	815 KAR 7:110	199.899	922 KAR 2.160
	815 KAR 7:120	199 894	922 KAR 2.160
198B 060	815 KAR 7:110		922 KAR 2:180
	815 KAR 7:120		922 KAR 2 002
	815 KAR 10 060	199 898	922 KAR 2.002
198B 062	815 KAR 10 060	199 899	922 KAR 2.160
198B.070	815 KAR 7.110	199.8994	922 KAR 2.160
	815 KAR 10 060	165A.350	201 KAR 40:150
198B.080	815 KAR 7.120	165A.360	201 KAR 40:160
	815 KAR 10 060	165A.370	201 KAR 40:160
198B.090	815 KAR 10 060	165A-390	201 KAR 40:155
198B.110	815 KAR 7.120	165A.360	201 KAR 40:160
	815 KAR 10 060	202A.011	922 KAR 1:350
198B.120	815 KAR 10.060		922 KAR 2:160
198B.130	815 KAR 10 060	202A.091	501 KAR 3:020

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202B.010

204

205 010

205 200

205.201

205.203

205.204

205.210

205.211

205.220

205.245

205.455

205.460

205.465

205 510

205.520

205.560

205.565

205.595

205.635

205 637

205 638

205.639

205.640

205.641

205.705

205 710

205 712

205.745

205.769

205.778

205.710-205 800

922 KAR 1:390

907 KAR 1:039

910 KAR 1:160

910 KAR 1:231

921 KAR 2 016

910 KAR 1:160

921 KAR 2 016

910 KAR 1:160

910 KAR 1:160

921 KAR 2.016

921 KAR 2:016

921 KAR 2.050

921 KAR 2 050

907 KAR 1 090

910 KAR 1:160

910 KAR 1:260

910 KAR 1:160

910 KAR 1:160

907 KAR 1:013

907 KAR 1:815

907 KAR 1:011

907 KAR 1:015

907 KAR 1:038

907 KAR 1:039

907 KAR 1:044

907 KAR 1:054

907 KAR 1:061

907 KAR 1:082

907 KAR 1:145

907 KAR 1.160

907 KAR 1:162

907 KAR 1:605

907 KAR 1:631

907 KAR 1 640

907 KAR 1:645

907 KAR 1 900

907 KAR 3.005

907 KAR 1.604

907 KAR 1:900

907 KAR 3:005

907 KAR 3 010

907 KAR 1:013

907 KAR 1:820

921 KAR 1:410

907 KAR 1:160

907 KAR 1:013

907 KAR 1:815

907 KAR 1:820

907 KAR 1:013

907 KAR 1:013

907 KAR 1:815

907 KAR 1 820

922 KAR 1:050

907 KAR 1:013

907 KAR 1:815

907 KAR 1:820

907 KAR 1:013

907 KAR 1:815

907 KAR 1:820

921 KAR 1:380

921 KAR 1:430

921 KAR 1:430

921 KAR 1:430

921 KAR 1:430

921 KAR 1 380

921 KAR 1:400

921 KAR 1:410

205.955

205.990

205.992

205.5605

205 5606

205.5607

205 6312

205 6481-6497

205 6485

205.7685

205.8451

205.8477

209.020

209.030

210.010

210.040

210.370-485

211.005

211.015

211.025

211.180

211.350-211.380

211.760

211.870

211.890

211.992

211.993

213.046

214.010

214.034

214.036

216.261

216 263

216 265

216.267

216.300

216.380

216.557

216.595

216 750

216 787

910 KAR 1:160

910 KAR 1:231

921 KAR 1:400

921 KAR 1:380

907 KAR 1:145

907 KAR 1:160

907 KAR 3:090

907 KAR 1:145

907 KAR 1:160

907 KAR 3:090

907 KAR 1:145

907 KAR 1:160

907 KAR 3:090

907 KAR 1:604

907 KAR 1:900

907 KAR 1:900

907 KAR 1:604

921 KAR 1:430

907 KAR 1:044

907 KAR 1.061

907 KAR 1:162

907 KAR 1 604

907 KAR 1:900

907 KAR 3.090

907 KAR 1.162

907 KAR 3.090

921 KAR 2.015

910 KAR 1.160

910 KAR 1:240

908 KAR 2:220

908 KAR 2:220

908 KAR 2:220

902 KAR 45 075

902 KAR 45.075

902 KAR 45.075

902 KAR 45:075

902 KAR 45:120

922 KAR 2:120

902 KAR 45:075

902 KAR 105:010

902 KAR 105:030

902 KAR 105:080

902 KAR 105:010

902 KAR 105:030

902 KAR 105:080

902 KAR 45:075

902 KAR 105:010

902 KAR 105:030

902 KAR 105:080

921 KAR 1.380

921 KAR 1:400

922 KAR 2.110

922 KAR 1.390

922 KAR 2.160

922 KAR 2:100

922 KAR 2:110

900 KAR 7:020

900 KAR 7:020

900 KAR 7:020

910 KAR 1:240

907 KAR 1:013

907 KAR 1.815

907 KAR 1 820

921 KAR 2 015

910 KAR 1.240

921 KAR 2:015

910 KAR 1:160

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216.789  
216.793  
216.2920-216.2929  
216B.010-216B.130

910 KAR 1:240  
910 KAR 1:240  
902 KAR 19.020  
900 KAR 5:020  
900 KAR 6:030  
902 KAR 20.009  
921 KAR 2.015  
922 KAR 1:050  
900 KAR 6:030  
900 KAR 6 030

216B.450  
216B.455  
216B.990

902 KAR 20 009

217.280-217.390

501 KAR 3 100

501 KAR 13:010

218A.240

906 KAR 1.160

218A.420

40 KAR 4:010

219.021

902 KAR 45.120

219.041

902 KAR 45:120

219.340

902 KAR 45 120

219.350

902 KAR 45 120

219.390

902 KAR 45 120

224A.011

200 KAR 17.011

224A.040

200 KAR 17.011

224A.112

200 KAR 17:011

224A.113

200 KAR 17 011

224A.270

200 KAR 17 011

224.01-010

401 KAR 51:001

224.020

401 KAR 52 001

224.20-100

401 KAR 51 001

401 KAR 51 052

401 KAR 52 001

224.20-110

401 KAR 51 001

401 KAR 51.052

401 KAR 52 001

224.20-120

401 KAR 51.001

401 KAR 51 052

401 KAR 52.001

227A.010

815 KAR 35.051

227A.060

815 KAR 35 051

227A.080

815 KAR 35:051

227A.100

815 KAR 35 051

227B.300

815 KAR 10 060

227.320

815 KAR 10.060

227.330

815 KAR 10 060

227.550

815 KAR 25 050

815 KAR 25.080

815 KAR 25:090

227.555

815 KAR 25 050

227.560

815 KAR 25:070

815 KAR 25.080

227.570

815 KAR 25 050

815 KAR 25 060

815 KAR 25.070

815 KAR 25:080

815 KAR 25:090

227.580

815 KAR 25:050

815 KAR 25:080

227.590

815 KAR 25:050

815 KAR 25:060

815 KAR 25:070

815 KAR 25:080

815 KAR 25:090

227.600

815 KAR 25:050

815 KAR 25.060

815 KAR 25:080

227.610

815 KAR 25 060

815 KAR 25 070

227.620

815 KAR 25:060

815 KAR 25.070

227.630

227.660

227.990

227.992

227.550 - 227.660

230.215

230.218

230.225

230.240

230.260

235.280

230.290

230.310

230.320

230.400

235.990

237.110

237.138

237.140

237.142

241.060

243.380

243.390

246

246.210

246.220

246.295

257

257.010

257.020

257.030

815 KAR 25 080

815 KAR 25.090

815 KAR 10 060

815 KAR 25 050

815 KAR 25 080

815 KAR 25 090

815 KAR 25.050

815 KAR 25 040

810 KAR 1 015

810 KAR 1:027

810 KAR 1:033

810 KAR 1 085

810 KAR 1.021

810 KAR 1 090

810 KAR 1 027

810 KAR 1:027

810 KAR 1 033

810 KAR 1:085

301 KAR 1:015

810 KAR 1 027

810 KAR 1:027

810 KAR 1.085

810 KAR 1.027

810 KAR 1 090

301 KAR 1:015

502 KAR 13 010

502 KAR 13 030

502 KAR 13.040

502 KAR 13 050

502 KAR 13:060

502 KAR 13 070

502 KAR 13 080

921 KAR 1:410

921 KAR 1.430

502 KAR 13 010

502 KAR 13 030

502 KAR 13.040

502 KAR 13 050

501 KAR 13:060

502 KAR 13:070

502 KAR 13 010

502 KAR 13.030

502 KAR 13 040

502 KAR 13.050

502 KAR 13.060

502 KAR 13:070

502 KAR 13:080

502 KAR 13:010

502 KAR 13:030

502 KAR 13:040

502 KAR 13:050

502 KAR 13:060

502 KAR 13:070

502 KAR 13:080

804 KAR 4:410

804 KAR 4:410

804 KAR 4:410

302 KAR 20.020

302 KAR 20 030

302 KAR 20.030

302 KAR 20 040

302 KAR 20 020

302 KAR 20 065

302 KAR 20 065

302 KAR 20 030

302 KAR 20:010

302 KAR 20 030

302 KAR 20.010

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	302 KAR 20:030	312.175	201 KAR 21:041
	302 KAR 20:040	312.200	201 KAR 21:095
257.070	302 KAR 20:040	313.010	201 KAR 8:450
257.110	302 KAR 20:030	313.050	201 KAR 8:220
278.702	807 KAR 5.110	313.060	201 KAR 8:220
301.22-020	806 KAR 14.006	313.100	201 KAR 8:220
301.23-010	806 KAR 14:006	313.310	201 KAR 8:450
304.3-270	806 KAR 17:150	314.011	201 KAR 20:056
304.4-010	806 KAR 13:150		201 KAR 20:057
	806 KAR 14:006		201 KAR 20 280
	806 KAR 14:007		201 KAR 20:290
	806 KAR 17:005		201 KAR 20:320
	806 KAR 17:150		907 KAR 1:054
304.12-010	806 KAR 12:180		907 KAR 1:082
304.12-013	806 KAR 17:500		920 KAR 2:040
304.12-030	806 KAR 12:180		922 KAR 1:350
304.13-031	806 KAR 13:150		922 KAR 2:100
304.13-051	806 KAR 13:150		922 KAR 2:110
304.13-061	806 KAR 13:150		922 KAR 2:120
304.13-081	806 KAR 13:150		922 KAR 2:160
304.13-67	803 KAR 25:280		922 KAR 2:180
304.14-020	806 KAR 17:500	314.021	201 KAR 20:320
304.14-120	806 KAR 17.500	314 035	201 KAR 20:470
304.14-140	806 KAR 17:500	314.041	201 KAR 20:260
304.14-150	806 KAR 17:500		201 KAR 20:320
304.14-180	806 KAR 17:500		201 KAR 20.340
304.21-010	806 KAR 13:150	314.042	201 KAR 20:056
304.22-020	806 KAR 13:150		201 KAR 20.057
304.23-010	806 KAR 13.150	314 051	201 KAR 20:260
304.14-120	806 KAR 14 006		201 KAR 20:340
	806 KAR 14 007	314 073	201 KAR 20:220
	806 KAR 17.005	314.085	201 KAR 20:450
	806 KAR 17:555	314.091	201 KAR 20:056
304.14-190	806 KAR 14:006		201 KAR 20:450
	806 KAR 14:007	314.111	201 KAR 20:220
	806 KAR 17:005		201 KAR 20:251
304.14-430 - 304.14-450	806 KAR 17:555		201 KAR 20.260
304.17A-080	806 KAR 17:180		201 KAR 20:270
304.17A-095	806 KAR 14 007		201 KAR 20:280
	806 KAR 17:005		201 KAR 20:290
	806 KAR 17:150		201 KAR 20:310
304.17A-096	806 KAR 14:007		201 KAR 20:320
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